

# Texas Historical Statutes Project

1879  
PENAL CODE  
OF THE  
STATE OF TEXAS



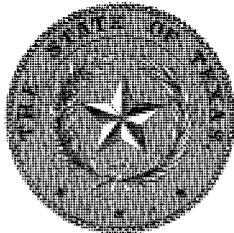
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THE  
PENAL CODE  
OF THE  
STATE OF TEXAS

PASSED BY THE  
SIXTEENTH LEGISLATURE,

FEBRUARY 21, 1879,

TOOK EFFECT JULY 24, 1879.



AUSTIN:  
STATE PRINTING OFFICE.  
1887.

AN ACT to Adopt and Establish a PENAL  
CODE and a CODE OF CRIMINAL  
PROCEDURE for the State of Texas.

*Section 1. BE IT ENACTED BY THE LEGISLA-  
TURE OF THE STATE OF TEXAS, That the following  
articles shall hereafter constitute the PENAL CODE  
of the State of Texas:*

*WHEREAS, The fact that the session of this Legislature is restricted  
to a short period by the constitution, and the fact that there is a large  
amount of necessary legislation demanding attention, constitutes an  
imperative public necessity which justifies the suspension of the con-  
stitutional rule requiring this bill to be read on three several days, there-  
fore the said rule is hereby suspended.*

Act to adopt  
and establish  
P. C. and C. of  
C. P., passed  
Feb. 21, 1879.

*WHEREAS, The Penal Code and Code of Criminal Procedure of  
the State of Texas has been printed and laid upon the desks of mem-  
bers, at the commencement of this session, which has afforded them  
ample time to read the same; and*

*WHEREAS, It is impossible to read the same through on three sev-  
eral days, as contemplated by the constitution; therefore*

*RESOLVED, An imperative public necessity exists that the constitu-  
tional rule, requiring bills to be read on three several days be suspended  
as to the reading, but the same shall be considered on three several  
days.*

1b.

# THE PENAL CODE.

## TITLE I

### General Provisions relating to the whole Code.

#### CHAPTER ONE.

##### THE GENERAL OBJECTS OF THE CODE, THE PRINCIPLES ON WHICH IT IS FOUNDED, AND RULES FOR THE INTERPRETATION OF PENAL LAWS.

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ARTICLE 1. The design of enacting this Code is to define in plain language every offense against the laws of this state, and affix to each offense its proper punishment.

Design of the Code.  
P.C. 1.

ART. 2. The object of punishment is to suppress crime and reform the offender.

Object of punishment.  
P.C. 2.

ART. 3. In order that the system of penal law in force in this state may be complete within itself, and that no system of foreign laws, written or unwritten, may be appealed to, it is declared that no person shall be punished for any act or omission, unless the same is made a penal offense and a penalty is affixed thereto by the written law of this state.

All penalties must be affixed by written law.  
P.C. 3.

ART. 4. The principles of the common law shall be the rule of construction, when not in conflict with the Penal Code, or Code of Criminal Procedure, or with some other written statute of the state.

Common law rule of construction, when (Act Feb. 12, 1858, p. 156.)  
P.C. 4.

ART. 5. In the construction of this Code each general provision shall be controlled by a special provision on the same subject, if there be a conflict.

Special provisions control general.  
P.C. 5.

ART. 6. Whenever it appears that a provision of the penal law is so indefinitely framed, or of such doubtful construction, that it can not be understood, either from the language in which it is expressed, or from some other written law of the state, such penal law shall be regarded as wholly inoperative.

Unintelligible law not operative.  
P.C. 6.

Judges to report defects in the law.  
P.C. 7.

ART. 7. Whenever a court trying an offense is of opinion that the law is so defective as to have no operation, or when it appears that there has been a failure to provide for any offense, or class of offenses, which ought to be made punishable, the judge of such court shall report the same to the legislature at its next session, after such defect or omission shall have been discovered.

Prosecuting officers to report defects in the law.  
P.C. 8.

ART. 8. It is also declared to be the duty of the attorney-general to call the attention of the legislature, in his reports which are required by law to be made to the governor, to any defects or omissions in the penal law which he may observe, and in like manner the district and county attorneys shall communicate to the attorney-general such suggestions as they may deem important touching the same subject.

General rule of construction.  
(Act Feb. 12, 1858, p. 156.)  
P.C. 9.

ART. 9. This Code, and every other law upon the subject of crime which may be enacted, shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects, and no person shall be punished for an offense which is not made penal by the plain import of the words of a law.

Words specially defined, how understood.  
P.C. 10 and 28.

ART. 10. Words which have their meaning specially defined, shall be understood in that sense, though it be contrary to their usual meaning; and all words used in this Code, except where a word, term or phrase is specially defined, are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed.

Innocence presumed.  
P.C. 11.

ART. 11. Every person accused of an offense shall be presumed to be innocent until his guilt is established to the satisfaction of those whose province it is to try him.

No offense against a law not in force.  
P.C. 12.

ART. 12. No act or omission can be punished as an offense, unless the law making it penal was in force at the time when such act or omission took place.

When laws take effect.  
P.C. 13.

ART. 13. No law of the legislature defining an offense, or affixing a penalty thereto, shall take effect until after the expiration of ninety days from the day of the adjournment of the session at which such penal law was enacted, unless the legislature shall otherwise determine.

Ignorance no excuse.  
P.C. 13.

ART. 14. After a law has taken effect, no person shall be excused for its violation upon the ground that he was ignorant of its provisions.

Effect of modification by subsequent law.  
P.C. 14.

ART. 15. When the penalty for an offense is prescribed by one law, and altered by a subsequent law, the penalty of such second law shall not be inflicted for a breach of the law committed before the second shall have taken effect. In every such case the offender shall be tried under the law in force when the offense was committed, and if convicted, punished under that law; except that when by the provisions of the second law the punishment of the offense is ameliorated, the defendant shall be punished under such last enactment, unless he elect to receive the penalty prescribed by the law in force when the offense was committed.

Repeal, effect of.  
P.C. 15.

ART. 16. The repeal of a penal law, where the repealing statute substitutes no other penalty, will exempt from punishment all persons who may have offended against the provisions of such repealed law, unless it be otherwise declared in the repealing statute.

When new penalty is substituted.  
P.C. 16.

ART. 17. When by the provisions of a repealing statute a new penalty is substituted for an offense punishable under the act repealed, such repealing statute shall not exempt from punishment a person who has offended against the repealed law while it was in force, but in such case the rule prescribed in article 15 shall govern.

Change of definition, effect of.  
P.C. 17.

ART. 18. If an offense be defined by one law, and by a subsequent law the definition of the offense is changed, no such change or modification shall take effect as to offenses already committed; but all offenders against the first law shall be tried, and their guilt or innocence determined in accordance with the provisions thereof.

ART. 19. No offense committed, and no fine, forfeiture or penalty incurred under existing laws, previous to the time when this Code takes effect, shall be affected by the repeal herein of any such existing laws; but the punishment of such offenses, and the recovery of such fines and forfeitures shall take place as if the laws repealed had still remained in force; except that when any penalty, forfeiture, or punishment shall have been mitigated by the provisions of this Code, such provision shall apply to and control any judgment to be pronounced after this Code shall take effect, for any offense committed before that time, unless the defendant elect to be punished under the provisions of the repealed law.

Previous offenses not affected by this Code.  
P.C. 18.

ART. 20. No penalty affixed to an offense by one law shall be considered as cumulative of penalties prescribed under a former law, and in every case where a new penalty is prescribed for an offense, the penalty of the first law shall be considered as repealed, unless the contrary be expressly provided in the law last enacted.

No cumulative penalties.  
P.C. 19.

## CHAPTER TWO.

### DEFINITIONS.

	Article		Article
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		"Preceding" and "succeeding" defined.....	29
		"Writing" and "oath".....	30
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ARTICLE 21. The general terms "*whoever*," "*any person*," "*any one*," and the relative pronouns "*he*" and "*they*," as referring to these terms, include females as well as males, unless there is some express declaration to the contrary. The word "*man*" is used to signify a male person of any age; and the word "*woman*" a female person of any age.

Definition of terms.  
P.C. 20.

ART. 22. The use of any word expressive of the *relationship, state, condition, office or trust* of any person, as of "parent," "child," "ascendant," "descendant," "minor," "infant," "ward," "guardian," or the like; or of the relative pronouns "he" or "they," in reference thereto, includes both *males* and *females*.

Words expressive of relationship, state, condition, trust, etc include what.  
P.C. 21.

ART. 23. The use of the singular number includes the plural, and the plural the singular; and words used in the masculine gender include the feminine also, unless, by reasonable construction, it appears that such was not the intention of the language.

Singular includes plural, and masculine feminine.  
P.C. 22.

ART. 24. Whenever any property or interest is intended to be protected by a provision of the penal law, and the general term "*person*," or any other general term, is used to designate the party whose property it is intended to protect, the provision of such penal law, and the protection thereby given, shall extend to the property of the state, and of all public or private corporations.

"Person" includes state or any corporation.  
P.C. 23.

ART. 25. The word "*accused*" is intended to refer to any person who, in a legal manner, is held to answer for any offense, at any stage of the proceeding, or against whom complaint, in a lawful manner, is made, charging the commission of an offense, including all proceedings from the order for arrest to the final execution of the law; and the word "*defendant*" is used in the same sense.

"Accused" and defendant synonymous.  
P.C. 24.

ART. 26. A "*criminal action*," as used in this Code, means the whole, and any part of the procedure which the law provides for bringing offenders to justice; and the terms "prosecution," "criminal prosecution," "accusation," and "criminal accusation," are used in the same sense.

"Criminal" action defined.  
P.C. 25.

“Convict” defined.  
P.C. 26.

ART. 27. An accused person is termed a “convict” after final condemnation by the highest court of resort, which, by law, has jurisdiction of his case, and to which he may have thought proper to appeal.

“Criminal process” defined.  
P.C. 27.

ART. 28. The term “criminal process” is intended to signify any *capias*, *warrant*, *citation*, *attachment*, or other written order issued in a criminal proceeding, whether the same be to arrest, commit to jail, collect money, or for whatever other purpose used.

“Preceding” and “succeeding” defined.  
P.C. 29.

ART. 29. The word “preceding” means the next preceding, and the word “succeeding” the next succeeding, whenever used, to designate any particular article, chapter, or title of the Code.

“Writing” and “oath.”  
P.C. 30.

ART. 30. The word “writing” includes *printing*, the word “oath” includes *affirmation*.

“Signature” defined.  
P.C. 31.

ART. 31. The word “signature” includes the mark of a person unable to write his name. A mark shall have the same effect as a signature, when the name is written by some other person, and the mark made near thereto, by the person unable to write his name.

CHAPTER THREE.

OF THE PERSONS PUNISHABLE UNDER THIS CODE, AND THE CIRCUMSTANCES WHICH EXCUSE, EXTENUATE, OR AGGRAVATE AN OFFENSE.

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The persons punishable under this Code. (Act Oct. 31, 1866, p. 70.)  
P.C. 32.

ARTICLE 32. All persons, whether inhabitants of this state or of the United States, or aliens, are amenable to punishment for offenses which are defined and made punishable under the provisions of this Code. The exceptions to the general rule here laid down, are given in the subsequent articles of this title.

Indians not punishable, except when. (Act Oct. 31, 1866, p. 70.)  
P.C. 35.

ART. 33. No act done within the uninhabited portion of the state, by individuals belonging to the several Indian tribes, in their intercourse with each other, or with other tribes, and affecting no other person, is considered as an offense against this Code, but in all other respects, such individuals are upon a footing with all other persons, both as to protection and liability to punishment.

Children not punishable.  
P.C. 36.

ART. 34. No person shall, in any case, be convicted of any offense committed before he was of the age of nine years; nor of any offense committed between the years of nine and thirteen, unless it shall appear by proof that he had discretion sufficient to understand the nature and illegality of the act constituting the offense.

Person under 17 years not punishable capitally.  
P.C. 37.

ART. 35. A person, for an offense committed before he arrived at the age of seventeen years, shall in no case be punished with death; but may, according to the nature and degree of the offense, be punished by imprisonment for life, or receive any of the other punishments affixed in this Code to the offense of which he is guilty.

Married woman, offenses by, etc.  
P.C. 38.

ART. 36. A married woman who commits an offense by the command or persuasion of her husband, shall not in any case be punished by death, but may be imprisoned for life, or a term of years, according to the nature

and degree of the crime; and in cases not capital, she shall receive only one-half the punishment to which she would otherwise be liable.

ART. 37. When it shall appear that a minor was aided or instigated in the commission of an offense, by a relation in the ascending line, or by his guardian, or an apprentice under age by his master, or a wife by her husband, such relation, guardian, master or husband, shall, at the discretion of the jury, in capital cases, be punished by death, and in cases not capital, shall receive double the punishment imposed by law in ordinary cases, for the same offense.

Husband, etc., instigating offense, double punishment. (Act Oct. 31, 1866, p. 71.) P.C. 39

ART. 38. The word "*minor*," as here and elsewhere used in this Code, signifies a person under the age of twenty-one years.

"Minor" defined. P.C. 40.

ART. 39. No act done in a state of insanity can be punished as an offense. No person who becomes insane after he committed an offense, shall be tried for the same while in such condition. No person who becomes insane after he is found guilty, shall be punished for the offense while in such condition.

Insanity, a defense. P.C. 41.

ART. 40. The rules of evidence known to the common law, in respect to the proof of insanity, shall be observed in all trials where that question is in issue. The manner of ascertaining whether the insanity is real or pretended, when it is alleged that the defendant became insane after the commission of the offense, is prescribed in the Code of Criminal Procedure.

Proof of insanity according to Common Law. P.C. 42.

ART. 41. A person in the lawful execution of a written process, or verbal order from a court or magistrate, is justified for any act done in obedience thereto.

Officer justified, when. P.C. 43.

ART. 42. A peace officer is in like manner justified for any act which he is bound by law to perform, without warrant or verbal order.

Peace officer justified when. P.C. 44.

ART. 43. A person forced by threats or actual violence to do an act, is not liable to punishment for the same. Such threats, however, must be—

Duress, a defense, when. P.C. 45.

1. Loss of life or great personal injury.

2. They must be such as are calculated to intimidate a person of ordinary firmness.

3. The act must be done when the person threatening is actually present.

The violence intended by this article must be such actual force as restrains the person from escaping, or such ill-treatment as is calculated to render him incapable of resistance.

ART. 44. No act done by accident is an offense, except in certain cases specially provided for, where there has been a degree of carelessness or negligence which the law regards as criminal.

Accidents excused, when. P.C. 46.

ART. 45. No mistake of law excuses one committing an offense; but if a person laboring under a mistake, as to a particular fact, shall do an act which would otherwise be criminal, he is guilty of no offense.

No mistake of law excuses. P.C. 47.

ART. 46. The mistake as to fact which will excuse, under the preceding article, must be such that the person so acting under a mistake, would have been excusable had his conjecture as to the fact been correct; and it must also be such mistake as does not arise from a want of proper care on the part of the person committing the offense.

Mistake of fact, excuse, when. P.C. 48.

ART. 47. If one intending to commit a felony, and in the act of preparing for or executing the same, shall, through mistake or accident, do another act, which, if voluntarily done, would be a felony, he shall receive the punishment affixed by law to the offense actually committed.

Act done by mistake, a felony, when. P.C. 49.

ART. 48. If one intending to commit a felony, and in the act of preparing for or executing the same, shall, through mistake or accident, do another act which, if voluntarily done, would be a misdemeanor, he shall receive the highest punishment affixed by law to the offense actually committed.

Same subject, as to misdemeanor. P.C. 50.

Felony committed by mistake, etc., lowest punishment affixed.

P.C. 51.

Intention presumed.

P.C. 52.

Burden of proof on defendant, when.

P.C. 53.

ART. 49. If one intending to commit a misdemeanor, and in the act of preparing for or executing the same, shall, through mistake, commit an offense which is by law a felony, he shall receive the lowest punishment affixed by law to the offense actually committed.

ART. 50. The intention to commit an offense is presumed, whenever the means used is such as would ordinarily result in the commission of the forbidden act.

ART. 51. On the trial of any criminal action, when the facts have been proved which constitute the offense, it devolves upon the accused to establish the facts or circumstances on which he relies to excuse or justify the prohibited act or omission.

TITLE II.

Of Offenses and Punishments.

CHAPTER ONE.

DEFINITION AND DIVISION OF OFFENSES.

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ARTICLE 52. An offense is an act or omission forbidden by positive law, and to which is annexed, on conviction, any punishment prescribed in this Code. "Offense" defined.  
P.C. 54.

ART. 53. Offenses are divided into felonies and misdemeanors. How divided.  
P.C. 55.

ART. 54. Every offense which is punishable by death or by imprisonment in the penitentiary, either absolutely or as an alternative, is a felony; every other offense is a misdemeanor. Felonies and misdemeanors defined.  
P.C. 56.

ART. 55. Felonies are either capital or not capital. An offense for which the highest penalty is death, is a capital felony. Felonies subdivided.  
P.C. 57.

ART. 56. An offense, which a justice of the peace, or the mayor, or other officer of a town or city, may try and punish, is called a petty offense. Petty offenses.  
P.C. 58.

ART. 57. Offenses are again subdivided, and classed as follows; they are— Subdivision and classification of offenses.  
P.C. 59.

1. Offenses against the state, its territory, property and revenue.
2. Offenses affecting the executive, legislative and judicial departments of the government.
3. Offenses affecting the right of suffrage.
4. Offenses which affect the free exercise of religious opinion.
5. Offenses against public justice.
6. Offenses against the public peace.
7. Offenses against public morals, decency and chastity.
8. Offenses against public policy and economy.
9. Offenses against public health.
10. Offenses affecting property held in common for the use of the public.
11. Offenses against trade and commerce, and the current coin.
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CHAPTER TWO.

OF PUNISHMENTS IN GENERAL.

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Punishments,  
P.C. 60.

ARTICLE 58. The punishments incurred for offenses under this Code, are—

1. Death.
2. Imprisonment in the penitentiary for life or for a period of time.
3. Imprisonment in the county jail.
4. Forfeiture of civil or political rights.
5. Pecuniary fines.

Continuous of-  
fenses, sup-  
pressed,  
P.C. 61

ART. 59. When an offense of which a person is convicted, is in its nature continuous, there shall also be judgment for its suppression.

No forfeiture in  
capital cases,  
P.C. 62.

ART. 60. In case of the execution of a convict under sentence of death, or where he is imprisoned for life, there shall be no forfeiture of any kind to the state, nor shall any cost of the prosecution be collected from his estate.

No forfeiture in  
any criminal  
case,  
P.C. 63.

ART. 61. When a convict is imprisoned in the penitentiary, his property shall be controlled and managed in the manner directed by law; but there shall, in no criminal case, be a forfeiture of property of any kind to the state.

Political rights,  
what are,  
(Act Feb. 12,  
1853, p. 156.)  
P.C. 64.

ART. 62. When the penalty affixed to the commission of an offense is deprivation of political rights, such rights are intended to include the rights of holding office, of serving on juries, and of suffrage.

Double punish-  
ment, how fix-  
ed,  
P.C. 65.

ART. 63. Whenever a minimum or maximum punishment is fixed by law, and by reason of any aggravation of the offense, or the existence of any circumstance on account of which the law directs that the punishment be doubled, this shall be construed to mean that the jury shall not inflict less than double the smallest punishment incurred by the law, nor more than double the greatest punishment so incurred.

Double punish-  
ment in misde-  
meanor,  
P.C. 66.

ART. 64. If fine and imprisonment are the punishments to be incurred for any offense, and it is provided that the punishment be doubled in any particular case, then the jury are to assess not less than double the smallest, and not more than double the largest fine prescribed by law, and not more than double the longest period of imprisonment, nor less than double the shortest period of imprisonment so prescribed.

Same subject,  
P.C. 67.

ART. 65. When an offense is punishable by either fine or imprisonment, and as an alternative it is declared that the punishment shall be doubled in any particular case, the jury are to assess not less than double the amount of the smallest fine, nor more than double the amount of the largest fine, or as an alternative they shall not assess less than double the shortest period of imprisonment nor more than double the longest period. This rule applies where there may be more than two kinds of punishment prescribed as alternatives.

Increase of  
punishment  
one-half,  
P.C. 69.

ART. 66. Where it is directed by law that in any particular case the punishment shall be increased one-half, it is to be construed to mean that the jury may, beside the punishment ordinarily prescribed by law, assess such additional punishment as shall not be less than one-half the penalty in ordinary cases, and all the rules before prescribed with respect to offenses which by law incur alternative punishments, are applicable to cases where the penalty is to be so increased.

ART. 67. When it is provided that the punishment in any given case, on account of mitigating circumstances, shall be diminished one-half, the jury shall assess one-half of the penalty fixed by law for the offense under ordinary circumstances, and so with regard to any other proportion in which the penalty is directed to be diminished.

Decrease of punishment one-half.  
P.C. 68.

ART. 68. In the diminution of punishments, the same rule as to two or more penalties, or as to alternative penalties, shall apply which are prescribed with regard to the increase of punishment.

Diminution of punishment, what rule.  
P.C. 70.

ART. 69. The foregoing rules, as to increase or diminution of punishments, have no application to cases where the highest penalty may be death, nor to any case where the penalty is total deprivation of civil or political rights.

Capital cases, etc., not included in foregoing rules.  
P.C. 71.

ART. 70. Whenever by the provisions of the Penal Code, or other law of the state, it is declared that an offense may be punished by death, or by some other penalty as alternative, the jury may by their verdict find the defendant guilty, and if this be the form of the verdict sentence of death shall be pronounced thereon. But in the cases above mentioned, the jury may in their discretion assess the lighter penalty prescribed by law within the limits so prescribed, and this, when so intended, shall be specially set forth in the verdict.

General verdict of guilty carries death penalty, when. (Act Feb. 12, 1858, p. 157.)  
P.C. 71a.

ART. 71. The punishment of death is inflicted by hanging, as prescribed in the Code of Criminal Procedure.

Death, how inflicted.  
P.C. 72.

ART. 72. Whenever the penalty, prescribed for an offense, is imprisonment for a term of years in the penitentiary, imprisonment to hard labor is intended.

Hard labor intended.  
P.C. 73.

ART. 73. Whenever an offense is committed by an officer and the same appears to the jury to be a willful violation of duty, they shall so find, and such officer shall be removed from office.

Officer to be removed, when.  
P.C. 75.

TITLE III.

Of Principals, Accomplices and Accessories.

CHAPTER ONE.

PRINCIPALS.

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Who are principals. P.C. 214. Same subject. P.C. 215. Same subject. P.C. 216. Same subject. P.C. 217. same subject. P.C. 218.

ARTICLE 74. All persons are principals who are guilty of acting together in the commission of an offense.

ART. 75. When an offense is actually committed by one or more persons, but others are present, and knowing the unlawful intent, aid by acts, or encourage by words or gestures, those actually engaged in the commission of the unlawful act; or who, not being actually present, keep watch so as to prevent the interruption of those engaged in committing the offense, such person so aiding, encouraging or keeping watch, are principal offenders, and may be prosecuted and convicted as such.

ART. 76. All persons who shall engage in procuring aid, arms, or means of any kind, to assist in the commission of an offense while others are executing the unlawful act, and all persons who endeavor, at the time of the commission of the offense, to secure the safety or concealment of the offenders, are principals, and may be convicted and punished as such.

ART. 77. If any one, by employing a child or other person, who can not be punished, to commit an offense, or by any means, such as laying poison where it may be taken, and with intent that it shall be taken, or by preparing any other means by which a person may injure himself, and with intent that such person shall thereby be injured, or by any other indirect means, cause another to receive an injury to his person or property, the offender, by the use of such indirect means, becomes a principal.

ART. 78. Any person who advises or agrees to the commission of an offense, and who is present when the same is committed, is a principal thereto, whether he aids or not in the illegal act.

CHAPTER TWO.

ACCOMPLICES.

	Article		Article
Accomplice, who is.....	79	If principal is under seventeen, punishment doubled.....	83
Precise offense need not be committed.....	80	If accomplice is parent, master, guardian or husband to principal, punishment increased	84
Punishment.....	81	No accomplice in manslaughter or negligent homicide.....	85
When one offense is attempted and another committed.....	82		

Accomplice, who is. P.C. 219.

ARTICLE 79. An accomplice is one who is not present at the commission of an offense, but who, before the act is done, advises, commands or encourages another to commit the offense; or,

Who agrees with the principal offender to aid him in committing the offense, though he may not have given such aid; or,

Who promises any reward, favor or other inducement; or threatens any injury in order to procure the commission of the offense; or,

Who prepares arms or aid of any kind, prior to the commission of an offense, for the purpose of assisting the principal in the execution of the same.

ART. 80. To render a person guilty as an accomplice, it is not necessary that the precise offense which he may have advised, or to the execution of which he may have given encouragement or promised assistance, should be committed; it is sufficient that the offense be of the same nature, though different in degree, as that which he so advised or encouraged. Precise offense need not be committed. P.C. 230.

ART. 81. Accomplices shall, in all cases not otherwise expressly provided for, be punished in the same manner as the principal offender. Punishment. P.C. 230a.

ART. 82. If in the attempt to commit one offense, the principal shall by mistake or accident commit some other under the circumstances set forth in articles 47, 48 and 49, the accomplice to the offense originally intended shall, if both offenses are felonies by law, receive the punishment affixed to the lower of the two offenses; but if the offense designed be a misdemeanor, he shall receive the highest punishment affixed by law to the commission of such misdemeanor, whether the offense actually committed be a misdemeanor or a felony. Where one offense is attempted and another committed. P.C. 231.

ART. 83. If the principal in an offense less than capital be under the age of seventeen years, the punishment of an accomplice shall be increased so as not to exceed, however, double the penalty affixed to the offense in ordinary cases. If principal is under 17, punishment doubled. P.C. 232.

ART. 84. If the accomplice stands in the relationship of parent, master, guardian or husband to the principal offender, he shall, in all such cases, receive the highest punishment affixed to the offense, and the same may, in felonies less than capital, be increased by the jury to double the highest penalty which would be suffered in ordinary cases. If accomplice is parent, master, guardian or husband to principal, punishment increased. P.C. 233.

ART. 85. There may be accomplices to all offenses, except manslaughter and negligent homicide. No accomplice in manslaughter or negligent homicide. P.C. 234.

## CHAPTER THREE.

### ACCESSORIES.

	Article		Article
Who is an accessory.....	86	How punished.....	88
Who can not be.....	87		

ARTICLE 86. An accessory is one who, knowing that an offense has been committed, conceals the offender, or gives him any other aid in order that he may evade an arrest or trial, or the execution of his sentence. But no person who aids an offender in making or preparing his defense at law, or procures him to be bailed, though he afterwards escape, shall be considered an accessory. Who is an accessory. P.C. 235.

ART. 87. The following persons can not be accessories: Who can not be. P.C. 236.

1. The husband or wife of an offender.
2. His relations in the ascending or descending line, by consanguinity or affinity.

3. His brothers and sisters.

4. His domestic servants.

ART. 88. Accessories to offenses shall be punished by the infliction of the lowest penalty to which the principal in the offense would be liable. How punished. P.C. 237.

CHAPTER FOUR.

TRIAL OF ACCOMPLICES AND ACCESSORIES.

	Article		Article
Accomplice may be tried before principal...	89	Can not be witnesses for each other, but may sever.....	91
Accessory also, unless principal is arrested..	90		

Accomplice may be tried before principal.  
P.C. 228.

ARTICLE 89. An accomplice may be arrested, tried, and punished, before the conviction of the principal offender, and the acquittal of the principal shall not bar a prosecution against the accomplice, but on the trial of an accomplice the evidence must be such as would have convicted the principal.

Accessory also, unless principal is arrested.  
P.C. 229.

ART. 90. An accessory may in like manner be tried and punished before the principal, when the latter has escaped; but if the principal is arrested, he shall be first tried, and, if acquitted, the accessory shall be discharged.

Can not be witnesses for each other, but may sever.  
P.C. 230.

ART. 91. Persons charged as principals, accomplices, or accessories, whether in the same indictment or by different indictments, can not be introduced as witnesses for one another, but they may claim a severance; and if any one or more be acquitted, they may testify in behalf of the others.

TITLE IV.

Of Offenses Against the State, its Territory,  
Property and Revenue.

CHAPTER ONE.

TREASON.

Article	Article
"Treason" defined .....	Punishment.....
92	93

ARTICLE 92. Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. (Cons. art. 1, sec. 22.)

"Treason" defined, P.C. 231.

ART. 93. If any citizen of this state be guilty of treason, he shall suffer death, or imprisonment in the penitentiary for life, at the discretion of the jury.

Punishment, P.C. 232.

CHAPTER TWO.

MISPRISION OF TREASON.

Article	Article
"Misprision of treason" defined.. ..	Punishment.....
94	95

ARTICLE 94. Whoever shall know that another person has committed treason, or is intending so to do, and shall not, within five days from the time of his having come to such knowledge, give information of the same to the governor, or to some magistrate or peace officer of the state, shall be deemed guilty of misprision of treason.

"Misprision of treason" defined, P.C. 233.

ART. 95. The punishment for misprision of treason is confinement in the penitentiary for a term not less than two nor more than seven years.

Punishment, (Act Feb. 12, 1858, p. 157-8.) P.C. 234.

CHAPTER THREE.

MISAPPLICATION OF PUBLIC MONEY.

Article	Article
Officer fraudulently taking or misapplying public money.....	Diverting special funds.....
96	102
"Misapplication" defined.....	Misapplication of county or city funds.....
97	103
What not included.....	Fraudulently receiving misapplied county or city funds.....
98	104
Receiving or concealing misapplied public money.....	Officer failing to pay over public money.....
99	Sec. 1—Sup.
"Officer of the government" defined.....	Venue.....
100	Sec. 1—Sup.
State treasurer improperly receiving private funds.....	Laws in conflict repealed.....
101	Sec. 2—Sup.

ARTICLE 96. If any officer of the government, who is by law a receiver or depositary of public money, or any clerk or other person employed about the office of such officer, shall fraudulently take, or misapply, or convert it to his own use, any part of such public money, or secrete the

Officer fraudulently taking or misapplying public money. (Act Feb. 12, 1858, p. 158.) P.C. 235.

same with intent to take, misapply, or convert it to his own use, or shall pay or deliver the same to any person, knowing that he is not entitled to receive it, he shall be punished by confinement in the penitentiary for a term not less than two nor more than ten years.

Using public funds.  
(Acts 1879, ch. 150, p. 165.)

ART. 97. Within the term, "misapplication of public money," are included the following acts:

Exchanging public funds.

First—The use of any public money, in the hands of any officer of the government, for any purpose whatsoever, save that of transmitting or transporting the same to the seat of government, and its payment into the treasury;

Depositing public funds elsewhere than in treasury.

Second—the exchange, by any officer, of one character of public funds in his hands, for those of another character; the purchase of bank checks or postoffice orders, in exchange, for transmission to the treasury, is not included in this class.

Officer purchasing warrants.

Third—the deposit, by any officer of the government, of public money in his hands, at any other place than the treasury of the state, when the treasury is accessible and open for business, or permitting the same to remain on deposit at such forbidden place, after the treasury is open;

Retaining funds after notice from comptroller.

Fourth—the purchase of state warrants or other evidence of state indebtedness, by any officer of the government, with public money in his hands;

Failing to pay into treasury at proper time.

Fifth—the retention in his hands, by any collector of taxes, of any funds belonging to the state for thirty days after receiving notice from the comptroller of public accounts, to pay the same over to the treasurer, as prescribed in article 4761 of the Revised Civil Statutes;

Other cases.

Sixth—the willful failure of any officer to pay into the state treasury, at the time prescribed by law, whatever funds he may have on hand;

Seventh—the special enumeration of cases of misapplication, above set forth, shall not be understood to exclude any case, which, by fair construction of language, comes within the meaning of the preceding language; *provided*, that this article shall not be construed to prevent collectors of taxes from paying warrants drawn by the comptroller in favor of officers living in their district or county, as may be provided by law.

Venue.

The offenses defined in subdivisions five and six of this article, when committed in any county in this state, may be prosecuted in the district court of Travis county, or in the county where the money was received.

What not included.  
(Act March 15, 1875, p. 180.)

ART. 98. Nothing in the two preceding articles contained shall apply to the sale or exchange of one kind of money for another by the financial officers of the state, when done in pursuance of law.

Receiving or concealing misapplied public money.  
(Act Feb. 5, 1875, p. 12.)  
P.C. 236.

ART. 99. If any person shall knowingly and with fraudulent intention receive or conceal any public money which has been taken, converted or misapplied by any officer or employé as set forth in the two preceding articles, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years.

"Officer of the government" defined.  
P.C. 237.

ART. 100. Under the term "officer of the government," as used in this chapter, are included the state treasurer and all other heads of departments who, by law, may receive or keep in their care public money of the state; tax collectors, and all other officers who, by law, are authorized to collect, receive or keep money due to the government.

State treasurer improperly receiving private funds.  
(Act May 3, 1873, pp. 61-2.)

ART. 101. If the treasurer of this state shall, knowingly, keep or receive into the building, safes, or vaults of the treasury, any money, or the representative of money, belonging to any individual, except in cases expressly provided for by law, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years.

Diverting special funds  
(Cons., art. 8, § 7.)

ART. 102. If any person shall, knowingly and willfully borrow, withhold, or in any manner divert from its purpose, any special fund, or any part thereof, belonging to or under the control of the state, which has been

set apart by law for a specific use, he shall be punished by confinement in the penitentiary for a term not less than two nor more than ten years.

ART. 103. If any officer of any county, city, or town in this state, or any clerk or other person employed by such officer, shall fraudulently take, misapply, or convert to his own use, any money, property, or other thing of value belonging to such county, city, or town, that may have come into his custody or possession, by virtue of his office or employment, or shall secrete the same with intent to take, misapply, or convert it to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be punished by confinement in the penitentiary for a term not less than two nor more than ten years.

Misapplication of county or city funds.

ART. 104. If any person shall, knowingly, and with fraudulent intention, receive or conceal any money or property which has been taken, misapplied, or converted by any officer or employé, as set forth in the preceding article, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years.

Fraudulently receiving misapplied county or city funds.

SUPPLEMENT.

Section 1. Every tax collector, or other officer or appointé authorized to receive public moneys, who shall willfully and negligently fail to comply with the direction and notification, as prescribed in sections 1 and 2 of the supplement to chapter 4, title xcv of the Revised Civil Statutes, shall be deemed guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than three nor more than ten years.

Officer failing to pay over public money. (Acts 1879, extra session, ch. 8, §§ 4, 5 and 6.)

Prosecutions, for failing to account for and pay over money belonging to the state, under the provisions of this section, shall be conducted in Travis county; and prosecutions for failing to account for, and pay over, moneys belonging to counties, cities and towns, shall be conducted in the county to which such money may belong, or in the county where such city or town is situated.

Venue.

Sec. 2. The provisions of the foregoing section shall be cumulative to the provisions of the above chapter, except where the latter may be in conflict with said section, and the provisions of said chapter, when in conflict with said section, are hereby repealed.

Laws in conflict, repealed. *Ib.* § 7.

CHAPTER FOUR.

OF ILLEGAL CONTRACTS AFFECTING THE STATE.

Contract to charge the state, without authority..... Article 105

ARTICLE 105. If any person or officer in this state shall contract with any other person for his service or labor, or for any property of any kind, with intent to charge the State of Texas with the same, and to do which, such person or officer has no authority by law, he shall be fined in any sum not less than one hundred dollars, and not more than two thousand dollars.

Contract to charge the state, without authority. (Act May 4, 1874, pp. 221-2.)

CHAPTER FIVE.

COLLECTION OF TAXES AND OTHER PUBLIC MONEY.

Article	Article
Collector extorting excessive taxes, etc. .... 106	Obstruction of tax collections..... 109
Tax officer, exacting usury..... 107	Pursuing taxable occupations without license 110
Tax officer assuming taxes for reward..... 108	Penalty not exclusive; tax receipt a license... 111
Collectors failing to forward transcript..... 108—Note	Payment of tax bars prosecution..... 112
	Refusal to render or swear to assessment... 113

ARTICLE 106. If any person authorized to collect or receive taxes or other money due the state, shall extort, or attempt to extort from any one, a larger sum than is due, or shall receive any sum of money or other

Collector extorting excessive taxes, etc. P.C. 238.

reward as a consideration for granting any delay in the collection of such dues, or for doing any illegal act, or omitting to do any legal act in relation to the collection of such money, he shall be punished by fine not exceeding five hundred dollars.

Tax officer exacting usury. P.C. 239.

ART. 107. If any assessor or collector of taxes shall advance for a person owing taxes to the government the amount of money so due, and shall charge therefor a rate of interest greater than twelve per centum per annum, he shall be punished in the manner provided in the preceding article.

Tax officer assuming taxes for reward. P.C. 240.

ART. 108. Within the meaning of the preceding article is included the case of any assessor or collector who fails to collect taxes due, and assumes to be responsible to the government therefor, and receives for such act any compensation or reward.

Collectors failing to forward transcript.

NOTE.—Section 6, chapter 134, acts 1879, provides that any collector, failing to forward to the comptroller a transcript from his record of occupation taxes in his county, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars. (See sup. to ch. 1, title xcv, Revised Civil Statutes.)—L.

Obstruction of tax collections. P.C. 241.

ART. 109. If any person shall, by force or threats of force, prevent, or attempt to prevent, the collection of taxes or other money due the state by an officer authorized to enforce such collection, he shall be punished by fine, not less than one hundred nor more than five hundred dollars, and by imprisonment in the county jail not less than three months nor more than one year.

When the means used to prevent the collection are such as to amount to a riot, or unlawful assembly, the punishment shall be that which is prescribed in article 296 of this Code.

Pursuing taxable occupation without license. (Act March 13, 1875, pp. 94-5.)

ART. 110. Any person who shall pursue or follow any occupation, calling or profession, or do any act taxed by law, without first obtaining a license therefor, shall be fined in any sum not less than the amount of the taxes so due, and not more than double that sum.

Penalty not exclusive; tax receipt a license. (Act March 13, 1875, p. 95.)

ART. 111. The preceding article shall not be construed so as to affect any civil remedy to enforce the collection of taxes; and a tax receipt for said tax, from the proper officer, shall be a sufficient license to follow such occupation, calling or profession.

Payment of tax bars prosecution. (Act March 13, 1875, p. 95.)

ART. 112. Any person prosecuted under article 110 shall have the right at any time before conviction to have such prosecution dismissed upon payment of said taxes and all cost of said prosecution; and no prosecution shall be commenced against any person after the payment of said taxes, notwithstanding they may have followed such occupation, calling or profession before paying the taxes therefor.

Refusal to render or swear to assessment. (Act Aug. 19, 1876, pp. 196-7.)

ART. 113. If any person shall refuse or neglect to make out and render a list of his taxable property when called upon in person by the assessor of taxes or his deputy, or shall fail or refuse to qualify to the truth of his statement of taxable property, or shall fail or refuse to subscribe to any oath or affirmation required by law in the rendition of taxable property, he shall be fined in any sum not less than twenty nor more than one thousand dollars.

NOTE.—Article 114 of this chapter, submitted by the Revisers, was stricken out by the legislature before adopting the Codes.—L.

### CHAPTER SIX.

#### DEALING IN FRAUDULENT LAND CERTIFICATES.

	Article	Article
Purchasing, selling, locating, or surveying fraudulent certificates.....	115	Surveyors locating unapproved certificates.. 116 Handling land office files without authority.. 117
Purchasing, selling, locating or surveying fraudulent certificates P.C. 242.		

ARTICLE 115. If any person shall purchase or sell any fraudulent or forged certificate for land, or locate or survey, or cause to be located or surveyed, any such certificate, or be in any manner directly or indirectly

concerned in the purchasing, selling, locating, or surveying of any such certificate for land, knowing the same to be fraudulent or forged, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years.

ART. 116. It shall not be lawful for any district or deputy surveyor to locate any certificate for land, or to survey any land for any person holding a head-right certificate of the first or second class, unless it be certified under the hand and seal of the clerk of the county court of the county where the certificate was issued, or the county where it is proposed to be located, or under the hand and seal of the commissioner of the general land office, that the same has been reported by the commissioners appointed under an act of congress to detect fraudulent land certificates, etc., passed January, 1840, as a genuine and legal claim against the government of Texas; and any surveyor offending against the true intent and meaning of this article, shall be deemed guilty of a high misdemeanor, and on conviction shall be fined in any sum not more than five thousand dollars.

Surveyor locating unapproved certificates. P.C. 243.

ART. 117. If any person shall handle or examine any of the papers, files, or records in the general land office, without the consent of the commissioner or chief clerk, or without the presence and superintendence of a clerk in said office, he shall be fined not less than one dollar nor more than five hundred dollars.

Handling land office files without authority. (Act June 2, 1873, p. 180.)

## CHAPTER SEVEN.

### DEALING IN PUBLIC LANDS BY OFFICERS.

Officers not to deal in public lands..... Article 118 | Clerks in land office not to give information 119

ARTICLE 118. If any person who is an officer or clerk in the general land office, or a district surveyor, or deputy district surveyor, or county surveyor, or his deputy, shall directly or indirectly be concerned in the purchase of any right, title, or interest, in any public land, in his own name, or in the name of any other person; or shall take or receive any fee or emolument for negotiating or transacting any business connected with the duties of his office, other than the fees allowed by law, he shall be fined in any sum not exceeding five hundred dollars.

Officers not to deal in public lands. P.C. 244.

ART. 119. Any clerk or other employé in the general land office, who shall accept or receive from any person or persons, money, or other thing of value, in consideration of services performed in the designation of vacant land, or in discovering and making known to such person or persons any defects in any file or files or any paper, or document in said office, or who shall perform any work out of office hours, or receive extra compensation in money or otherwise for any work performed in office hours, or who shall handle or interfere with the records and files of said office, except in office hours, shall be fined in any sum not less than one hundred, nor more than five hundred dollars; and, in addition thereto, it shall be the duty of the commissioner of the general land office to immediately discharge such clerk or employé from said office.

Clerks in the land office not to give information. (Act June 2, 1873, p. 182.)

**TITLE V.**  
**Offenses Affecting the Executive, Legisla-**  
**tive and Judicial Departments of**  
**the Government.**

**CHAPTER ONE.**

**BRIBERY.**

	Article	Article	
Bribery of certain officers.....	120	Bribery of clerks of courts.....	130
Officer accepting bribe.....	121	Acceptance of bribe by same.....	131
Officers specified.....	122	Bribery of same to do any act.....	132
Bribery of clerks, etc., in legislative and ex-		Bribery of sheriffs and peace officers.....	133
ecutive departments.....	123	Same subject.....	134
Accepting bribe by same.....	124	Same subject.....	135
Bribery of auditor, juror, etc.....	125	Acceptance of bribe by sheriffs, etc.....	136
Acceptance of bribe by same.....	126	Bribery of witness.....	137
Offense complete, when.....	127	Acceptance of bribe by witness.....	138
Bribery of attorneys.....	128	"Bribe" defined.....	139
Acceptance of bribe by same.....	129	Bribe need not be direct.....	140

Bribery of cer-  
 tain officers.  
 (Act Feb. 12,  
 1858, p. 159.)  
 P.C. 250.

ARTICLE 120. If any person shall bribe, or offer to bribe, any execu-  
 tive, legislative, or judicial officer, after his election or appointment, and  
 either before or after he shall have been qualified or entered upon the  
 duties of his office, with intent to influence his act, vote, opinion, decision  
 or judgment, on any matter, question, cause or proceeding which may be  
 then pending, or may thereafter by law be brought before such officer in  
 his official capacity, or to do any other act, or omit to do any other act in  
 violation of his duty as an officer, he shall be punished by confinement in  
 the penitentiary, for a term not less than two nor more than five years.

Officers accept-  
 ing bribe.  
 (Act Feb. 12,  
 1858, p. 159.)  
 P.C. 251.

ART. 121. Any legislative, executive or judicial officer, who shall accept  
 a bribe, or consent to accept a bribe, under an agreement, or with an under-  
 standing that his act, vote, opinion, or judgment, shall be done or given in  
 any particular manner, or upon a particular side of any question, cause or  
 proceeding, which is or may thereafter by law be brought before him, or  
 that he shall make any particular nomination or appointment, or do any  
 other act, or omit to do any act in violation of his duty as an officer, shall  
 be punished by confinement in the penitentiary not less than two nor more  
 than ten years.

Officers speci-  
 fied.  
 P.C. 252.

ART. 122. Under the name of executive, legislative and judicial officers,  
 are included the governor, lieutenant-governor, comptroller, secretary of  
 state, state treasurer, commissioner of the general land office, commis-  
 sioner of insurance, statistics and history, members of the legislature,  
 judges of the supreme, district and county courts and of the court of  
 appeals, attorney-general, district and county attorneys, justices of the  
 peace, mayors and judges of such city courts as may be organized by law,  
 and county commissioners.

Bribery of  
 clerks, etc., of  
 legislative and  
 executive de-  
 partments.  
 (Act Feb. 12,  
 1858, p. 159.)  
 P.C. 253.

ART. 123. If any person shall bribe, or offer to bribe, any clerk or other  
 officer of either branch of the legislature, or any clerk or employé in any  
 department of the state government, with the intent to influence such  
 officer to make any false entry in any book or record pertaining to his

office, or to mutilate or destroy any part of such book or record, or to violate any other duty imposed upon him as an officer, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

ART. 124. If any officer named in the preceding article shall accept a bribe so offered, or consent to accept the same, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Accepting  
bribe by same.  
(Act Feb. 12,  
1858, p. 159.)  
P.C. 254.

ART. 125. If any person shall bribe, or offer to bribe any auditor, juror, arbitrator, umpire or referee, with intent to influence his decision, or bias his opinion in relation to any cause or matter which may be pending before, or may thereafter by law be submitted to such auditor, juror, arbitrator, umpire or referee, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Bribery of au-  
ditor, juror, etc.  
(Act Feb. 12,  
1858, p. 161.)  
P.C. 299.

ART. 126. If any juror, auditor, arbitrator, umpire or referee shall accept, or agree to accept a bribe offered for the purpose of biasing or influencing his opinion or judgment, as set forth in the preceding article, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Acceptance of  
bribe by same.  
(Act Feb. 12,  
1858, p. 161.)  
P.C. 300.

ART. 127. To complete the offenses mentioned in the two preceding articles, it is not necessary that the auditor, umpire, arbitrator or referee shall have been actually selected or appointed; it is sufficient if the bribe be offered or accepted with a view to the probable appointment or selection of the person to whom the bribe is offered, or by whom it is accepted. Nor is it necessary that the juror shall have been actually summoned; it is sufficient if the bribe be given or accepted in view of his being summoned as a juror or selected as such, to sit in any particular case, civil or criminal.

Offense com-  
plete, when.  
P.C. 301.

ART. 128. If any person shall bribe, or offer to bribe any attorney at law, charged with the prosecution or defense of a suit, with intent to induce him to divulge any secret of his client, or any circumstance which came to his knowledge as counsel, to the injury of his client, or with intent to induce him to give counsel, or in any way advise or assist the opposite party, to the injury of his client, in any cause civil or criminal, or to neglect the interests of his client, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Bribery of  
attorneys.  
(Act Feb. 12,  
1858, p. 161.)  
P.C. 302.

ART. 129. If any attorney at law, charged as above stated with the management of any cause, civil or criminal, shall accept or agree to accept a bribe offered to induce him to divulge any secret of his client, or any circumstance which came to his knowledge as counsel, to the injury of his client, or to give counsel or in any way advise or assist the opposite party to the injury of his client, or to neglect the interests of his client, he shall be punished in the manner provided in the preceding article.

Acceptance of  
bribe by same.  
P.C. 303.

ART. 130. If any person shall bribe, or offer to bribe, any clerk or deputy clerk of any court of record, to induce such officer to alter, destroy or mutilate any book, record or paper pertaining to his office, or to surrender to the person offending any book, record or paper for any unlawful purpose, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than five years.

Bribery of  
clerks of courts  
(Act Feb. 12,  
1858, p. 161.)  
P.C. 304.

ART. 131. If any clerk, or deputy clerk, of any court of record in this state, shall accept or agree to accept a bribe offered for the purposes enumerated in the preceding article, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than five years.

Acceptance of  
bribe by same.  
(Act Feb. 12,  
1858, p. 161.)  
P.C. 305.

ART. 132. If any person shall bribe, or offer to bribe, any officer named in article 130, to do any other act not enumerated in said article, in violation of the duties of his office, or to omit to do any other act incumbent on him as an officer, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Bribery of  
same to do any  
official act,  
(Act Feb. 12,  
1858, p. 161.)  
P.C. 306.

Bribery of sheriffs and peace officers. (Act Feb. 12, 1858, p. 162.) P.C. 307.

ART. 133. If any person shall bribe, or offer to bribe, any sheriff or other peace officer, to permit any prisoner in his custody to escape, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than five years.

Same subject. (Act Feb. 12, 1858, p. 162.) P.C. 308.

ART. 134. If any person shall bribe, or offer to bribe, any sheriff or other peace officer, in any case, civil or criminal, to make a false return upon any process directed to him, or to fail to return any such process, or to summon, or fail to summon, any one to serve on a jury, with a view to produce a result favorable to a particular side in any cause, civil or criminal, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Same subject. (Act Feb. 12, 1858, p. 162.) P.C. 309.

ART. 135. If any person shall bribe, or offer to bribe, a sheriff or any other peace officer to do any other act not heretofore enumerated, contrary to his duty as an officer, or to omit to do any duty incumbent upon him as an officer, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Acceptance of bribe by sheriffs, etc. P.C. 310a.

ART. 136. If any sheriff, or other executive or peace officer, shall accept or agree to accept a bribe offered, as mentioned in articles 133, 134 and 135, he shall receive the same punishment as is affixed to the offense of giving or offering a bribe in the particular case specified.

Bribery of witness. (Act Feb. 11, 1860, p. 95.) P.C. 310a.

ART. 137. If any person shall bribe or offer to bribe any witness in any case, either civil or criminal, to disobey a subpoena or other legal process, or to avoid the service of the same by secreting himself, or by any other means, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Acceptance of bribe by witness. (Act Feb. 11, 1860, p. 95.) P.C. 310b.

ART. 138. If any witness in any case, civil or criminal, shall accept or agree to accept a bribe offered for the purpose or purposes mentioned in the preceding article, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

"Bribe" defined. P.C. 255. (Const., art. 16, §41.)

ART. 139. By a "bribe," as used throughout this Code, is meant any gift, emolument, money, or thing of value, testimonial, privilege, appointment, or personal advantage, or the promise of either, bestowed or promised, for the purpose of influencing an officer, or other person, such as are named in this chapter, in the performance of any duty, public or official; or as an inducement to favor the person offering the same, or some other person.

Bribe need not be direct. P.C. 256.

ART. 140. The bribe, as defined in the preceding article, need not be direct; it may be hidden under the semblance of a sale, wager, payment of a debt, or in any other manner designed to cover the true intention of the parties. The bribe, or the promise thereof, must precede the act which it is intended to induce the person bribed to perform.

## CHAPTER TWO.

### DRUNKENNESS IN OFFICE.

	Article	Article
State or district officers guilty of drunkenness.....	141	County or municipal officer guilty of drunkenness..... 143
"State or district officer" defined.....	142	"Drunkenness" defined..... 144
		Drunkenness in public place, how punished. 144a

State or district officer guilty of drunkenness. (Act July 31, 1876, pp. 76-7.)

ARTICLE 141. Any state or district officer in this state, who shall be guilty of drunkenness, shall be subject to removal from office in the manner provided by law; and upon conviction thereof, in any court of competent jurisdiction, shall be fined in any sum not less than ten nor more than two hundred dollars.

"State or district officer" defined.

ART. 142. Within the term "state or district officer" are included the governor, lieutenant-governor, the heads of the several executive depart-

ments at the capital, and their chief clerks, the judges of the supreme court, court of appeals, and the district courts, district attorneys, members and officers of the senate and house of representatives, and all other officers who derive their appointment directly from state authority.

ART. 143. Any county or municipal officer who shall be guilty of drunkenness, shall, for the first offense, be fined in any sum not less than five and not more than fifty dollars; upon a second conviction for the same offense, he shall be fined not less than fifty nor more than one hundred dollars; and upon a third conviction for the same offense, he shall be fined not less than one hundred nor more than three hundred dollars, and be subject to removal from office in the manner provided by law.

County or municipal officer guilty of drunkenness.  
(Act July 31, 1876, pp. 76-7.)

ART. 144. Drunkenness, as used in this chapter, is the immoderate use of any spirituous, vinous or malt liquors to such an extent as to incapacitate an officer from the discharge of the duties of his office, either temporarily or permanently.

"Drunkenness" defined.  
(Act July 31, 1876, p. 76.)

ART. 144a. Any person, who shall get drunk, or be found in a state of intoxication, in any public place, shall be deemed guilty of a misdemeanor, and on conviction before a court of competent jurisdiction, shall be fined in a sum of not more than one hundred dollars for each and every such offense.

Drunkenness in public place how punished.  
(Act to adopt and establish P. C. and C. of C. P., passed Feb. 21, 1873.)

TITLE VI.

Of Offenses Affecting the Right of Suffrage.

CHAPTER ONE.

BRIBERY AND UNDUE INFLUENCE.

	Article	Article
Bribery of elector.....	145	Election officers accepting a bribe..... 148
Elector accepting bribe.....	146	Bribery of any person to influence voter..... 149
Bribery of election officers.....	147	Furnishing money for election purposes.... 150

<p>Bribery of elector. P.C. 257.</p> <p>Elector accepting a bribe. P.C. 258.</p> <p>Bribery of election officers. P.C. 259.</p> <p>Election officer accepting a bribe. P.C. 260.</p> <p>Bribery of any person to influence voter. P.C. 261.</p> <p>Furnishing money for election purposes. P.C. 262.</p>	<p>ARTICLE 145. If any person shall bribe, or offer to bribe, any elector, for the purpose of influencing his vote at any public election, he shall be punished by fine not exceeding five hundred dollars.</p> <p>ART. 146. If any elector shall accept a bribe offered as set forth in the preceding article, he shall be punished in like manner as is provided with respect to the person offering the bribe.</p> <p>ART. 147. If any person shall bribe, or offer to bribe, any manager, judge, or clerk of a public election, or any officer attending the same, as a consideration for some act done or omitted to be done, or to be done or omitted contrary to his official duty in relation to such election, he shall be punished by fine not exceeding five hundred dollars.</p> <p>ART. 148. If any manager, judge or clerk of an election, or officer attending thereon, shall accept a bribe offered as set forth in the preceding article, he shall be punished in the same manner as is provided in reference to the persons offering the bribe.</p> <p>ART. 149. If any one shall offer or give a bribe to any person whatever, for the purpose of inducing him to persuade, or by means not amounting to bribery, to procure persons to vote at any public election, for or against any particular candidate, the person so giving or offering, and the person so accepting, shall be punished by fine not exceeding two hundred dollars.</p> <p>ART. 150. If any person shall furnish money to another, to be used for the purpose of promoting the success or defeat of any particular candidate, or of any particular question submitted to a vote of the people, he shall be punished by fine not exceeding two hundred dollars.</p>
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CHAPTER TWO.

OFFENSES BY JUDGES AND OTHER OFFICERS OF ELECTIONS.

	Article	Article
Sundry offenses by election officers.....	151	Officer attempting to influence voter..... 155
Election officer opening ballot, etc. ....	152	Intimidation by election officer..... 156
Election officer divulging vote.....	153	Presiding officer failing to deliver ballots... 157
Officer corruptly refusing vote.....	154	Officer giving false certificate..... 158

<p>Sundry offenses by election officers. P.C. 264.</p>	<p>ARTICLE 151. If any manager, judge or clerk of an election, shall knowingly make or consent to any false entry on the list of voters, or put into the ballot-box, or permit to be put in, any ballot not given by a voter, or take out of such box, or permit to be taken out, any ballot deposited</p>
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therein, except in the manner prescribed by law, or change any ballot given by an elector, or make any false return as to the number of votes given for or against any particular candidate, the person so offending shall be punished by fine not less than one hundred dollars nor more than one thousand dollars.

ART. 152. Any manager, or other officer of election, who shall unfold or examine any ballot, or who shall examine the indorsement on any ballot by comparing it with the list of voters when the votes are counted or being counted, or who shall examine or permit to be examined by any other person the ballots subsequent to their being received into the ballot-box, except in the manner prescribed by law, shall be punished by confinement in the penitentiary for a term not less than one nor more than two years.

Election officer opening ballot, etc. (Act Aug. 23, 1876, p. 308, §16.) (Acts 1879, ch. 112, p. 119.)

ART. 153. Any presiding officer, judge, clerk or other officer of an election, who shall divulge how any person has voted at such an election, from an inspection of the tickets, unless in a judicial investigation, shall be fined in any sum not less than one hundred nor more than five hundred dollars.

Election officer divulging vote. (Act Aug. 23, 1876, p. 309, §16.) (Acts 1879, ch. 112, p. 120.)

ART. 154. If any manager, or judge of an election, shall corruptly refuse to receive the vote of any qualified elector, who shows by his own oath, that he is entitled to vote, when his vote is objected to, such manager or judge shall be punished by fine not exceeding two hundred dollars.

Officer corruptly refusing vote. P.C. 266.

ART. 155. Any manager, judge or clerk of an election, who shall, while discharging his duties as such, attempt to influence the vote of an elector, for or against any particular candidate, shall be punished by fine not exceeding two hundred dollars.

Officer attempting to influence voter. P.C. 267.

ART. 156. Any manager, judge or clerk of an election, who shall, while in discharge of his duties as such, by violence or threats of violence, attempt to influence the vote of an elector for or against any particular candidate, shall be punished by fine, not exceeding one thousand dollars.

Intimidation by election officer. P.C. 268.

ART. 157. Any presiding officer of any election precinct, who shall fail, immediately after such election, to securely box, in the mode prescribed by law, all the ballots cast thereat, and, within five days thereafter, to deliver the same to the county clerk of his county, shall be fined not less than fifty nor more than five hundred dollars, and, in addition thereto, may be imprisoned in the county jail for a period not exceeding six months.

Presiding officer failing to deliver ballots. (Act Aug. 23, 1876, p. 308, §16.)

ART. 158. If any officer authorized by law to give a certificate of election shall, knowingly and corruptly, give any false certificate thereof, he shall be punished by fine not exceeding three hundred dollars, and, in addition thereto, may be imprisoned in the county jail for a term not less than one month nor more than one year.

Officer giving false certificate. P.C. 269.

CHAPTER THREE.

RIOTS AND UNLAWFUL ASSEMBLIES AT ELECTIONS, AND VIOLENCE USED OR MENACED TOWARD ELECTORS.

	Article	Article
Riots at elections .....	159	Intimidation of electors.....
Unlawful assemblies to prevent.....	160	Carrying arms about elections.....
Tumults, mobs and disturbances at.....	161	

ARTICLE 159. If any riot be committed at the place of holding a public election, or within one mile of such place, with a design to disturb or influence such election, every person engaged therein shall be punished by fine not exceeding one thousand dollars.

Riots at elections. P.C. 271.

ART. 160. If any unlawful assembly meet at the place of holding an election, or within a mile thereof, for the purpose of preventing the holding of such election, all persons engaged in such unlawful assembly shall be punished by fine not exceeding five hundred dollars.

Unlawful assemblies, to prevent. P.C. 272.

Tumults, mobs and disturbances at elections. (Act Aug. 23, 1876, p. 311, §25.)

ART. 161. If any person shall disturb any election, by inciting or encouraging a tumult or mob, or shall cause any disturbance in the vicinity of any poll or voting place, he shall be punished by fine of not less than one hundred nor more than five hundred dollars, and, in addition thereto, may be imprisoned in the county jail for a period not exceeding one month.

Intimidation of electors. (Act Aug. 23, 1876, p. 311, §25.)

ART. 162. If any person shall, by force or intimidation, obstruct or influence, or attempt to obstruct or influence any voter in the free exercise of the elective franchise, he shall suffer the punishment prescribed in the preceding article.

Carrying arms about elections. (Act Aug. 23, 1876, p. 311, §25.)

ART. 163. If any person, other than a peace officer, shall carry any gun, pistol, bowie knife, or other dangerous weapon, concealed or unconcealed, on any day of election, during the hours the polls are open, within the distance of one-half mile of any poll or voting place, he shall be punished as prescribed in article 161 of this Code.

## CHAPTER FOUR.

### MISCELLANEOUS OFFENSES AFFECTING THE RIGHT OF SUFFRAGE.

	Article		Article
Illegal arrest of voter.....	164	Failing to deliver returns.....	171
Illegal voting.....	165	Preventing delivery of returns.....	172
Repeating.....	166	Officer opening ballot.....	173
Depositing ballot not prescribed by law.....	166—Note	County clerk failing to keep ballot-boxes securely.....	174
Depositing two or more tickets folded together.....	166—Note	County clerk failing to destroy ballots.....	175
Instigating illegal voting.....	167	Not applicable in cases of contest.....	176
False swearing by voter.....	168	Willful neglect of official duty.....	177
Procuring voter to swear falsely.....	169	Keeping open bar-rooms on election day....	178
Altering, suppressing, etc., ballots.....	170	Not applicable, in what cases.....	179

Illegal arrest of voter. P.C. 270.

ARTICLE 164. If any magistrate or peace officer shall, knowingly, cause an elector to be arrested in attending upon, going to, or returning from an election, except in cases of treason, felony, or breach of the peace, he shall be punished by fine not exceeding three hundred dollars.

Illegal voting. (P.C. 275 and Act Aug. 23, 1876, p. 310.)

ART. 165. If any person knowing himself not to be a qualified voter, shall, at any election, vote, or offer to vote, for any officer to be then chosen, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Repeating. (Act Aug. 23, 1876, p. 310, §25.)

ART. 166. If any person shall vote, or attempt to vote more than once at the same election, he shall be punished as prescribed in the preceding article.

Depositing illegal ballots, or tickets folded together.

NOTE.—Chapter 112, acts 1879, after prescribing the kind of ballot to be used at elections, and prohibiting the pasting of the name of one candidate over the name of any other candidate, and the depositing of two or more tickets folded together, adds this penalty: "And any person, who shall deposit any ballot, except as provided in this section, or, shall deposit two or more tickets folded together, at any election in this state, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding one hundred dollars." See appendix.—L.

Instigating illegal voting. (P.C. 276 and Act Aug. 23, 1876, p. 311, §25.)

ART. 167. Every person who shall procure, aid, assist, counsel, or advise another to give his vote at any election, knowing that the person is not duly qualified to vote, or shall procure, aid, assist, counsel, or advise another to give his vote more than once at such election, shall be fined in a sum not less than one hundred nor more than five hundred dollars, and may, in addition thereto, be imprisoned in the county jail for a period not exceeding one month.

False swearing by voter. P.C. 278.

ART. 168. If any person challenged as unqualified shall be guilty of willful and corrupt false swearing, in taking any oath prescribed by law, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

- ART. 169. Every person who shall willfully and corruptly procure any person to swear falsely, as prescribed in the preceding article, shall be punished by confinement in the penitentiary for any time not exceeding three years, or by fine not exceeding three thousand dollars. Procuring voter to swear falsely, ballots. P.C. 279.
- ART. 170. If any person shall fraudulently alter or obliterate, or willfully secrete, suppress, or destroy any ballots, election return, or certificate of election, he shall be punished by fine not exceeding three thousand dollars. Altering, suppressing, etc., ballots. P.C. 280.
- ART. 171. If any person intrusted with the transmission of an election return, shall willfully do any act that shall defeat the delivery thereof, or shall willfully neglect to deliver the same, as directed by law, he shall be punished by fine not exceeding one thousand dollars. Failing to deliver returns. P.C. 281.
- ART. 172. If any person shall take away such election return from any person intrusted therewith, either by force or in any other manner, or shall willfully do any act that shall defeat the due delivery thereof, as directed by law, he shall be punished by fine not exceeding two thousand dollars. Preventing delivery of returns. P.C. 282.
- ART. 173. Any officer or person with whom may be legally deposited the ballots cast in an election, who shall open and read any ballot, or who shall permit it to be done, except in cases provided for by law, shall be punished by fine not less than fifty nor more than five hundred dollars, and may, in addition thereto, be imprisoned in the county jail not to exceed six months. Officer opening ballots. (Act Feb. 12, 1858, p. 160.) P.C. 289a. (Acts 1879, ch. 112, p. 120.)
- ART. 174. If any clerk of the county court, in this state, shall fail, neglect, or refuse to securely keep any ballot-box containing tickets of election committed to his custody by the presiding officer of any election precinct, he shall be punished by fine not less than fifty nor more than five hundred dollars, and, in addition thereto, he may be imprisoned in the county jail for a period not exceeding six months. County clerk failing to keep ballot-boxes securely. (Act Aug. 23, 1876, p. 308, §16.)
- ART. 175. If any clerk of the county court, in this state, shall fail, after the expiration of one year from the date of any election, to destroy by burning, all the ballots cast at such election which may have come to his custody, he shall be punished as prescribed in the preceding article. County clerk failing to destroy ballots. (Act Aug. 23, 1876, p. 308, §16.)
- ART. 176. The provisions of the foregoing article shall not apply to cases in which a contest may have grown out of any election, within one year after the date of such election. Not applicable in cases of contest. (Act Aug. 23, 1876, p. 308, §16.)
- ART. 177. If any officer on whom a duty is enjoined, in any statute relating to elections, shall be guilty of a willful neglect of such duty, or shall act corruptly, or with partiality, in the discharge of such duty, in any matter not provided for in this title, he shall be fined in a sum not less than one hundred nor more than one thousand dollars. Willful neglect of official duty. P.C. 283.
- ART. 178. If any person in this state shall open or keep open any bar-room, saloon, or other place, house, or establishment where vinous, malt, spirituous, or intoxicating liquors are sold, during any portion of the day on which an election is held in his voting precinct, village, town, or city, for any purpose or office whatsoever, or shall sell, barter, or give away any vinous, malt, spirituous or intoxicating liquor during the day on which any such election is held, he shall be fined not less than one hundred nor more than five hundred dollars. Keeping open bar-rooms on election day. (Act Aug. 23, 1876, p. 310, §21.)
- ART. 179. The provisions of the preceding article shall not apply to the sale of liquor at any drug store or establishment where drugs are sold for medical purposes, when such sale is made on the day of election, on the prescription of a practicing physician, nor to the sale of liquor by regular wholesale merchants to be shipped or sent out of the county, nor shall such provisions be construed so as to prevent stores from being opened for the sale of other goods, wares, and merchandise, on the day of any election. Not applicable, in what cases. (Act Aug. 23, 1876, p. 310, §21.)

TITLE VII.

Of Offenses which affect the Free Exercise of Religious Opinion.

CHAPTER ONE.

DISTURBANCE OF RELIGIOUS WORSHIP.

	Article		Article
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Disturbance of congregation in any manner. (Act April 23, 1873, p. 43.) P.C. 284.  Offender may be bound over, etc. P.C. 285.  Double penalty for second offense. P.C. 286.	ARTICLE 180. Any person who, by loud or vociferous talking or swearing, or by any other noise, or in any other way, willfully disturbs any congregation or part of a congregation, assembled for religious worship, and conducting themselves in a lawful manner, whatever may be the religion professed by such congregation, shall be fined in any sum not less than twenty-five nor more than one hundred dollars, and may be imprisoned in the county jail not exceeding thirty days, at the discretion of the jury. ART. 181. If complaint be made to any magistrate that a person has committed the offense mentioned in the preceding article, he may be, at the discretion of the magistrate, bound over to keep the peace, and to refrain from like disturbance for the term of one year. ART. 182. Double the punishment prescribed in article 180 shall be imposed for any subsequent offense of the same kind.
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CHAPTER TWO.

SUNDAY LAWS.

	Article		Article
Working on Sunday.....	183	Selling goods on Sunday.....	186
Not applicable, when.....	184	Drugs not included. ....	187
Horse-racing, gaming, etc., on Sunday.....	185		

Working on Sunday. (Act Dec. 2, 1871, p. 62.)  Not applicable, when. (Act Dec. 2, 1871, p. 62.)	ARTICLE 183. Any person who shall hereafter labor, or compel, force or oblige his employes, workmen or apprentices, to labor on Sunday, shall be fined not less than ten nor more than fifty dollars. ART. 184. The preceding article shall not apply to household duties, works of necessity or charity; nor to necessary work on farms or plantations in order to prevent the loss of any crop; nor to the running of steamboats and other water crafts, rail cars, wagon trains, common carriers, nor to the delivery of goods by them or the receiving or storing of said goods by the parties, or their agents to whom said goods are delivered; nor to stages carrying the United States mail or passengers; nor to founderies, sugar mills, or herders who have a herd of stock actually gathered and under herd; nor to persons traveling; nor to ferry-men or keepers of toll-bridges, keepers of hotels, boarding houses, and restaurants and their servants; nor to keepers of livery stables and their servants; nor to any per-
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son who conscientiously believes that the seventh or any other day of the week ought to be observed as the Sabbath, and who actually refrains from business and labor on that day for religious reasons.

ART. 185. Any person who shall run or be engaged in running any horse race, or who shall permit or allow the use of any nine or ten-pin alley, or who shall be engaged in match-shooting, or any species of gaming for money or other consideration, within the limits of any city or town on Sunday, shall be fined not less than twenty nor more than fifty dollars.

Horse-racing, gaming, etc., on Sunday. (Act Dec. 2, 1871, p. 62.)

ART. 186. Any merchant, grocer or dealer in wares or merchandise, or trader in any lawful business whatsoever, who shall barter or sell on Sunday, shall be fined not less than twenty nor more than fifty dollars; *provided*, this article shall not apply to markets or dealers in provisions as to sales made by them before nine o'clock A. M.

Selling goods on Sunday. (Act Dec. 2, 1871, p. 62.) (Act to adopt and establish P. C. and C. of C. P., passed Feb. 21, 1879.)

ART. 187. The preceding article shall not apply to the sale of drugs and medicines on Sunday.

Drugs not included. (Act Dec. 2, 1871, p. 62.)

TITLE VIII.

Of Offenses Against Public Justice.

CHAPTER ONE.

OF PERJURY.

	Article		Article
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Not perjury, when.....	189	Immaterial statement not perjury.....	193
Oath must be legally administered.....	190	Punishment.....	194
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"Perjury" defined.  
P.C. 287.

ARTICLE 188. Perjury is a false statement, either written or verbal, deliberately and willfully made, relating to something past or present, under the sanction of an oath, or such affirmation as is by law equivalent to an oath, where such oath or affirmation is legally administered, under circumstances in which an oath or affirmation is required by law, or is necessary for the prosecution or defense of any private right, or for the ends of public justice.

Not perjury, when.  
P.C. 288.

ART. 189. A false statement made through inadvertence, or under agitation, or by mistake, is not perjury.

Oath must be legally administered.  
P.C. 289.

ART. 190. The oath or affirmation must be administered in the manner required by law, and by some person duly authorized to administer the same in the matter or cause in which such oath or affirmation is taken.

And about something past or present.  
P.C. 290.

ART. 191. The false statement must be of something past or present—oaths of office, or any other promissory oaths, are therefore not included in the definition of perjury, except that part of the official oath prescribed by the constitution which relates to duelling.

In what sort of proceeding.  
(Act March 15, 1875, p. 170.)  
P.C. 290a.

ART. 192. All oaths or affirmations legally taken in any stage of a judicial proceeding, civil or criminal, in or out of court, or before a grand jury, are included in the description of this offense.

Immaterial statement not perjury.  
P.C. 291.

ART. 193. The statement of any circumstance wholly immaterial to the matter in respect to which the declaration is made is not perjury.

Punishment.  
P.C. 292.

ART. 194. The crime of perjury is punished by imprisonment in the penitentiary for a term not more than ten years nor less than five years.

Perjury in capital case.  
P.C. 293.

ART. 195. When the perjury is committed on a trial of a capital felony, and the person guilty of such perjury has, on the trial of such felony, sworn falsely to a material fact tending to produce conviction, and the person so accused of the capital felony is convicted and suffers the penalty of death, the punishment of the perjury so committed shall be death.

CHAPTER TWO.

OF FALSE SWEARING.

	Article		Article
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Past or present.....	197		

"False swearing," definition of.  
P.C. 294.

ARTICLE 196. If any person shall deliberately and willfully, under oath or affirmation legally administered, make a false statement by a voluntary declaration or affidavit, which is not required by law, or made in the course

of a judicial proceeding, he is guilty of "false swearing," and shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

ART. 197. The false swearing must, as in regard to perjury, be relative to something past or present.

ART. 198. If any officer of this state, or of any district or county thereof, who is charged by law with the duty of receiving or collecting public moneys, other than taxes, for the use of the state or counties, and reporting the same, under oath, to the district, county, or commissioners' court of any county, shall falsely report the amount of such collections, or any part thereof, he shall be deemed guilty of false swearing, and upon conviction, shall be punished as prescribed in article 196.

Past or present. P.C. 295.  
Officer falsely reporting collections of public moneys. (Act May 1, 1874, pp. 182-3.)

### CHAPTER THREE.

#### OF SUBORNATION OF PERJURY AND FALSE SWEARING.

Article	Article
Subornation of perjury, or false swearing... 199	Attempt at subornation of perjury, etc... 200

ARTICLE 199. If any person shall designedly induce another to commit perjury or false swearing, he shall be punished as if he had himself committed the crime.

Subornation of perjury or false swearing. P.C. 296.

ART. 200. If any person shall, by any means whatever, corruptly attempt to induce another to commit the offense of perjury, or false swearing, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Attempt at subornation of perjury. P.C. 297-8.

### CHAPTER FOUR.

#### OFFENSES RELATING TO THE ARREST AND CUSTODY OF PRISONERS.

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Aiding prisoner charged with felony to escape from officer... 213	"Jail" defined... 226
	"Officer" defined... 227
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	Refusing to aid officer... 229

ARTICLE 201. Any officer, jailer or guard, having the legal custody of any person accused or convicted of a capital offense, who willfully permits such person to escape, or to be rescued, shall be punished by confinement in the penitentiary not less than two nor more than ten years.

Officer in charge of prisoner willfully permitting escape in capital case. P.C. 312.

ART. 202. Any officer, jailer or guard, who has the legal custody of any person accused or convicted of a felony less than capital, who willfully permits such person to escape, or to be rescued, shall be punished by imprisonment in the penitentiary for a term not less than two and not exceeding five years.

In felonies. P.C. 313.

ART. 203. Any officer, jailer or guard, having the legal custody of a person accused or convicted of a misdemeanor, who willfully permits

In misdemeanors. P.C. 314.

such person to escape, or to be rescued, shall be fined not exceeding one thousand dollars.

Negligently permitting escape in capital case.  
P.C. 315.

ART. 204. Any officer, jailer or guard, who has the legal custody of a person accused or convicted of a capital offense, and who negligently permits such person to escape, or to be rescued, shall be punished by fine not exceeding two thousand dollars.

In felonies.  
P.C. 316.

ART. 205. Any officer, jailer or guard, who has the legal custody of a person accused or convicted of a felony less than capital, and who negligently permits such person to escape, or to be rescued, shall be punished by fine not exceeding one thousand dollars.

In misdemeanors.  
P.C. 317.

ART. 206. Any officer, jailer or guard, who has the legal custody of a person accused or convicted of a misdemeanor, and who negligently permits such person to escape, or to be rescued, shall be punished by fine not to exceed five hundred dollars.

Officer refusing to arrest or receive in felony.  
(Act Feb. 11, 1860, p. 96.)  
P.C. 318.

ART. 207. Any sheriff or other officer who willfully refuses or fails from neglect to execute any lawful process in his hands, requiring the arrest of a person accused of a felony, whereby such person escapes, or willfully refuses to receive in a jail under his charge, or to receive into his custody any person lawfully committed to such jail and ordered to be confined therein on an accusation of felony, or lawfully committed to his custody on such accusation, shall be fined not exceeding two thousand dollars.

Same in cases of misdemeanor.  
(Act Feb. 11, 1860, p. 96.)  
P.C. 319.

ART. 208. Any sheriff or other officer who willfully refuses or fails from neglect to execute any lawful process in his hands, requiring the arrest of a person accused of a misdemeanor, whereby the accused escapes, or who willfully refuses to receive into a jail under his charge, or to receive in his custody any person lawfully committed to such jail on an accusation of misdemeanor, or lawfully committed to his custody on such accusation, shall be punished by fine not exceeding five hundred dollars.

Private person appointed to execute, same as officer.  
P.C. 320.

ART. 209. If any private person, appointed with his own consent to execute a warrant of arrest, shall be guilty of any one of the offenses heretofore enumerated in this chapter, he shall be punished in the same manner as an officer in a like case.

Conveying arms, disguises, etc., into jail to aid felon.  
(Act Feb. 12, 1858, p. 162.)  
P.C. 321.

ART. 210. If any person shall convey, or cause to be conveyed, into any jail, any disguise, instrument, arms, or any other thing useful to aid any prisoner in escaping, with intent to facilitate the escape of a prisoner lawfully detained in such jail, on an accusation of felony, or shall, in any other manner calculated to effect the object, aid in the escape of a prisoner legally confined in jail, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Same in misdemeanor.  
P.C. 323.

ART. 211. If any person shall, by any of the means contemplated in the preceding article, aid in the escape of a person legally confined in jail upon an accusation for a misdemeanor, he shall be fined not exceeding five hundred dollars.

Breaking into jail to rescue prisoner.  
P.C. 322, 324.

ART. 212. If any person shall break into any jail for the purpose of effecting the rescue or escape of a prisoner therein confined, or for the purpose of aiding in the escape of any prisoner so confined, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than six years.

Aiding prisoner charged with felony to escape from officer.  
(Act Feb. 12, 1858, p. 162.)  
P.C. 325.

ART. 213. If any person shall willfully aid in the escape of a prisoner from the custody of an officer, by whom he is legally held in custody on an accusation for a felony, by doing any act calculated to effect that object, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years; and if, in aiding in the escape, he shall make use of arms, he shall be punished by imprisonment in the penitentiary for a term not less than two nor more than ten years.

Same aid in case of misdemeanor.  
P.C. 326.

ART. 214. If any person shall willfully aid a prisoner to escape from the custody of an officer, by whom he is legally detained in custody on an accusation for a misdemeanor, by doing any act calculated to effect

that object, he shall be punished by fine not exceeding five hundred dollars; and if, in aiding in the escape, he shall make use of arms, he shall be punished by fine not exceeding one thousand dollars.

ART. 215. Any executive officer, director, superintendent, manager, operator, clerk, messenger or other party in the employ of a telegraph company, who shall willfully divulge, or in any manner make known, except to the proper authority, the contents of any warrant, affidavit or telegram relating to any crime already committed, or for the prevention of the same, shall, upon conviction, be fined in a sum not less than five hundred dollars, nor more than two thousand, or be imprisoned in the state penitentiary for a term not less than two years nor more than five years.

Telegraph officer divulging process. (Act April 17, 1871, p. 40, § 7.)

ART. 216. If any person shall prevent or defeat the execution of any process in a civil cause, by any means not amounting to actual resistance, but which are calculated to prevent the execution of such process, he shall be punished by fine not exceeding five hundred dollars; evading the execution of such process is not an offense under this article.

Preventing execution of civil process. P.C. 327.

ART. 217. The offenses enumerated in articles 210, 211, 212, 213 and 214 are complete without the actual escape of the prisoner; and a person accused of any of said offenses may be prosecuted and tried, although the person escaping be retaken, and although after being retaken he is brought to trial and acquitted.

Offenses complete without actual escape. P.C. 323-9.

ART. 218. Any person who has been convicted of a misdemeanor or petty offense, and afterwards hired under authority of law, who shall escape from his employer or person hiring him, during the term of which he may have been hired, shall be punished by imprisonment in the county jail for a term not exceeding two years.

County convict escaping from employer. (Act Aug. 21, 1876, p. 229, § 4.)

ART. 219. If any person shall willfully oppose or resist an officer in executing, or attempting to execute, any lawful warrant for the arrest of another person, in a case of felony, he shall be punished by confinement in the penitentiary for a term not less than two nor more than five years; and if arms be used in such resistance, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years.

Person resisting officer in case of felony (Act Feb. 12, 1858, p. 163.) P.C. 331.

ART. 220. If any person shall willfully oppose or resist an officer in executing, or attempting to execute, any lawful warrant for the arrest of another person in a case of misdemeanor, he shall be punished by fine not exceeding five hundred dollars; and if arms be used the punishment shall be doubled.

In cases of misdemeanor. P.C. 332.

ART. 221. If any person shall willfully resist or oppose an officer in executing, or attempting to execute, any process in a civil cause, he shall be fined not exceeding five hundred dollars; and if arms be used in such resistance the punishment shall be doubled.

In civil cases. P.C. 333.

ART. 222. If the party against whom a legal warrant of arrest is directed in any criminal case, resist its execution, when attempted by any person legally authorized to execute the same, he shall be fined not exceeding five hundred dollars; and if arms be used in making the resistance, in such manner as would make him liable for an assault and battery, or assault with intent to murder, or any other offense against the person, he shall receive the highest penalty affixed by law for the commission of such offense in ordinary cases.

Accused resisting process. P.C. 334.

ART. 223. To render a person guilty of any of the offenses included within the meaning of articles 219 and 220, the warrant or process must be executed, or its execution attempted, in a legal manner.

Process must be legal. P.C. 335.

ART. 224. The word *accusation*, as used here, and in every part of this Code, means a charge made in a lawful manner against any person, that he has been guilty of some offense which subjects him to prosecution in the name of the state. A person is said to be *accused* of an offense from the time that any *criminal action* shall have been commenced against him.

"Accusation" defined. P.C. 336.

A legal arrest without warrant;

A complaint to a magistrate;

A warrant legally issued; and indictment, or an information, are all examples of *accusations*, and a person proceeded against by either of these, is said to be *accused*.

“Legally confined in jail” defined.  
P.C. 337.

ART. 225. A person is “*legally confined in jail*,” or “legally detained in custody,” when he has been committed or arrested upon a legal warrant, or arrested in any of the modes pointed out in the Code of Criminal Procedure.

“Jail” defined.  
P.C. 338.

ART. 226. The word “jail” means any place of confinement used for detaining a prisoner.

“Officer” defined.  
P.C. 339.

ART. 227. By “officer,” as used in this chapter, is meant any peace officer, as sheriff, deputy sheriff, constable of a beat, marshal, constable or policeman of a city or town, any jailer or guard, or any person specially authorized by warrant to arrest.

“Arms” defined.

ART. 228. The term “arms,” as used in this chapter, includes any deadly weapon.

Refusing to aid an officer.  
(Act Feb. 12, 1858, p. 163.)  
P.C. 339a.

ART. 229. If any person, being called on by a magistrate, or peace officer, shall fail or refuse to aid such officer in any matter in which, by law, he may be rightfully called on to aid or assist in the execution of a duty incumbent upon such magistrate, or peace officer, he shall be punished by fine not exceeding one hundred dollars.

## CHAPTER FIVE.

### FALSE CERTIFICATE, AUTHENTICATION OR ENTRY BY AN OFFICER.

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“Instrument of writing” defined.....	231	Clerk giving false certificate..... 235
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Commissioner of deeds giving false certificate.  
P.C. 340.

ARTICLE 230. If any person, being a commissioner of deeds and depositions, who is residing out of this state, and acting as such commissioner under authority of a law of the state, shall fraudulently certify to the execution of any instrument of writing which was never in fact acknowledged or proved before him, as the same purports to have been acknowledged or proved, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

“Instrument of writing” defined.  
P.C. 341.

ART. 231. By “instrument of writing” is meant any deed, conveyance, transfer, release, obligation, or other written instrument of any kind or description whatever which such commissioner is, by law, authorized to authenticate for record.

Commissioner certifying falsely to deposition.  
P.C. 342.

ART. 232. If any such commissioner shall falsely certify to any deposition purporting to have been taken before him, and to be used in any cause pending in a court of this state, he shall be punished in the same manner as is prescribed in article 230.

Same as to affidavit.  
P.C. 343.

ART. 233. If any such commissioner shall falsely certify to any affidavit purporting to have been made before him, and which, by law, he is authorized to take, he shall be punished as prescribed in article 230.

Clerks of court making false entry.  
P.C. 344.

ART. 234. If any clerk of a court in this state, shall knowingly make any false entry upon the records of his court, which may prejudice or injure the rights of any person, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Giving false certificate.  
P.C. 345.

ART. 235. If any such clerk shall give a false certificate, stating that any person has done any act whatever, to which he has a right to certify, or that such person is entitled to any right whatever, when such clerk

may by law give such certificate if the same were true, he shall be punished as directed in the preceding article.

ART. 236. If any notary public, or other officer authorized by law, shall give a false certificate for the purpose of authenticating any instrument of writing for registration, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Notary public giving false certificate. P.C. 346.

ART. 237. If any officer authorized by law to take depositions or administer oaths in this state, shall falsely certify that any deposition was sworn to before him, or any oath made, or shall with fraudulent intent place his certificate, signature or seal to any affidavit which is drawn with blanks as to any matter of substance, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years. Within the meaning of this article shall be included the case of an officer who, with design that the same may be filled up and used for fraudulent purposes, attaches his signature or seal of office to any paper wholly blank.

Officer giving blank certificate. (Act Feb. 12, 1858, p. 163.) P.C. 347.

ART. 238. Any county clerk, justice of the peace, notary public, or any other officer in this state authorized by law to take acknowledgments, or proof of instruments required or permitted by law to be placed on record, who shall willfully fail, neglect or refuse to enter and record in a well-bound book, a short statement of each acknowledgment or proof taken by him and sign the same officially, shall be fined in any sum not less than one hundred nor more than five hundred dollars.

Failing to keep a record of acknowledgment (Act April 28, 1874, p. 156.)

ART. 239. By "short statement," as used in the preceding article, is meant that such statement shall recite the true date on which such acknowledgment or proofs were taken, the name of the grantor and grantee of such instrument, its date, if proved by a subscribing witness, the name of the witness, the known or alleged residence of the witness, and whether personally known or unknown to the officer; if personally unknown, this fact shall be stated, and by whom such person was introduced to the officer, if by any one; and the known or alleged residence of such person. Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is personally known to the officer; if personally unknown, by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of the original grantee shall be mentioned, and the county where the same is situated; and a failure to comply with any one of these requirements shall be punished as prescribed in the preceding article.

Requisites of such record. (Act April 28, 1874, p. 156.)

CHAPTER SIX.

MISCELLANEOUS OFFENSES.

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I. EXTORTION.

Extortion by officers.  
P.C. 352.

ARTICLE 240. If any officer authorized by law to demand or receive fees of office, or any person employed by such officer, shall willfully demand or receive higher fees than are allowed by law, he shall be punished by fine not exceeding one hundred dollars for each offense.

Applies to all officers.  
P.C. 353.

ART. 241. The preceding article applies to all persons holding any office to which fees are attached, and to the heads of the departments of the government in whose offices fees may be charged.

II. CONVERSION.

Conversion by sheriff, etc.  
(Act Feb. 12, 1858.)  
P.C. 354a.

ART. 242. If any sheriff or other officer, having collected money for any party to a suit, shall, without the consent of such party, unlawfully convert the same, or any part thereof, to his own use, he shall be punished in the same manner as if he had committed theft of such money.

Appropriation of trust funds.  
(Act May 19, 1876, p. 7.)

ART. 243. If any officer of any court who has the legal custody of any money, evidence of debt, scrip, instrument of writing, or other article, that may have been deposited in court to abide the result of legal proceedings, shall appropriate the same to his own use, he shall be punished as if he had committed theft of such money, evidence of debt, scrip, instrument of writing, or other article.

Officer failing to deposit trust funds, etc.  
(Act May 19, 1876, p. 7.)

ART. 244. Any officer of any court having the custody by law of any money, evidence of debt, scrip, instrument of writing, or other article that may have been deposited in court to abide the result of any legal proceedings, who shall fail to seal up in a secure package the identical money or other article received by him, and deposit the same in some iron safe or bank vault; or who, when such money or other article is so deposited, shall fail to keep it always accessible and subject to the control of the proper court; or who shall fail to keep, in a well-bound book, a correct statement showing each and every item of money or other article so received or deposited, on what account received, and what disposition has been made of the same, shall be punished by fine not less than ten nor more than two hundred dollars, or by imprisonment in the county jail for a period not exceeding three months; and may, in addition thereto, be punished by the proper court for contempt.

Failing to turn over funds, etc., to successor.  
(Act May 19, 1876, p. 7.)

ART. 245. Any officer such as is enumerated in the preceding article, who shall fail or refuse to turn over to his successor in office, on the expiration of his own term of office, the record of trust funds therein specified,

together with the packages of money or other articles in his possession or control, shall be punished as prescribed in the preceding article.

### III. PECULATION.

ART. 246. Any officer of this state who shall trade for, buy or be in any way concerned in the purchase of any claim or demand against the state, shall be fined in the sum of one thousand dollars.

State officer buying claims against state. (Act May 3, 1873, p. 62.)

ART. 247. By the term "officer of this state," as used in the preceding article, is meant the governor, lieutenant-governor, the heads or employés of any of the executive departments, members and officers of both houses of the legislature, the judges of the several courts, district and county attorneys, sheriffs, tax collectors, and tax assessors.

"State officer" defined.

ART. 248. Any officer of any county in this state, or of any city or town therein, who shall contract directly or indirectly, or become in any way interested in any contract, for the purchase of any draft or order on the treasurer of such county, city, or town, or for any jury certificate or any other debt, claim, or demand for which said county, city or town may, or can in any event, be made liable, shall be punished by fine of not less than ten nor more than twenty times the amount of the order, draft, jury certificate, debt, claim, or liability so purchased or contracted for.

County or city officer trading in claims. (Act March 30, 1874, p. 47.)

ART. 249. Within the term "officer," as used in the preceding article, are included ex-officers, until they have made a final settlement of their official accounts.

Ex-officers included, when. (Act March 30, 1874, p. 47.)

ART. 250. If any officer of any county in this state, or of any city or town therein, shall become in any manner pecuniarily interested in any contract made by such county, city, or town, through its agents or otherwise, for the construction or repair of any bridge, road, street, alley, or house, or any other work undertaken by such county, city, or town, or shall become interested in any bid or proposal for such work, or in the purchase or sale of anything made for or on account of such county, city, or town, or who shall contract for or receive any money or property, or the representative of either, or any emolument or advantage whatsoever, in consideration of such bid, proposal, contract, purchase or sale, he shall be fined in a sum not less than fifty nor more than five hundred dollars.

County or city officers becoming interested in contracts. (Act March 30, 1874, p. 47.)

ART. 251. Any county judge, clerk or deputy clerk of any district or county court, sheriff or his deputy, justice of the peace, or constable, who shall purchase, or otherwise acquire from the party interested, any fee or fees coming to any witness in any proceeding whatever, either before the district or county court, or the court of any justice of the peace, or before any coroner's inquest, shall be punished by fine not exceeding one hundred dollars.

Purchase of witness fees by officer. (Act Feb. 12, 1858, p. 164.) P.C. 354b.

### IV. FAILURE OF DUTY.

ART. 252. Whenever any officer, who is by law charged with the issuance or execution of process, either in civil or criminal actions, corruptly and willfully refuses to issue or execute such process, or corruptly and willfully refuses to perform any other duty enjoined upon him by law, he shall, when the act or omission is not otherwise provided for or punished, be deemed guilty of a misdemeanor, and shall be fined not exceeding five hundred dollars, and may, in the discretion of the jury, be imprisoned in the county jail not exceeding one year.

Officer refusing to issue or execute process, etc. P.C. 348.

ART. 253. If any justice of the peace, sheriff, or other peace officer, shall willfully neglect to return, arrest, or prosecute any person committing a breach of the peace, or other crime or misdemeanor, which has been committed within his view or knowledge, or shall willfully and knowingly absent himself from any place where such crime or misdemeanor is being committed, or is about to be committed, for the purpose of avoiding seeing or having a knowledge of the same, he shall be guilty of a misdemeanor, and, on conviction, shall be fined not less than seventy-five dollars nor more than five hundred dollars.

Failure to arrest offender. P.C. 354.

Officers of old county failing to deliver records to new. (Act May 1, 1874, p. 188.)

ART. 254. Any district or county clerk, sheriff, justice of the peace, county treasurer or surveyor, or any other officer of a county to which some other unorganized or disorganized county is attached for judicial or other purposes, who shall fail, neglect, or refuse to turn over to the proper officers of such unorganized or disorganized county, on demand, and after the organization of such unorganized or disorganized county and the qualification of its officers, all books, records, maps, and all other property belonging to said county so organized, that may be in his possession, shall be fined in a sum not less than one hundred nor more than one thousand dollars, or be confined in the county jail for a period not exceeding one year.

Approval of bond when security is non-resident. (Act April 14, 1874, p. 93.)

ART. 255. Any officer whose duty it may be to pass upon and approve the official bond of a sheriff, or other county officer, who shall approve such bond, when any surety thereon is not a resident of the county of such sheriff or other officer, shall be punished by fine not less than one hundred nor more than five hundred dollars.

Officer failing to report collections for state. (Act May 1, 1874, p. 182.)

ART. 256. Any district attorney, sheriff, deputy sheriff, constable, or other officer, whose duty it may be to collect money, other than taxes, for the use of the state, who shall fail to report to the district court of his county, in writing and under oath, on the first day of each term thereof, the amount of money that may have come into his hands for the use of the state since the last term of said court, from whom the same was collected, and by virtue of what process, shall be punished by fine not less than twenty nor more than two hundred dollars.

Officer failing to report collections for county. (Act May 1, 1874, p. 182.)

ART. 257. Any officer such as is named in the preceding article, whose duty it may be to collect money, other than taxes, for the use of any county, who shall fail to report in writing, and under oath, to the commissioners' court of such county at each regular term thereof, the amount of money that may have come into his hands for the use of such county since the last term of said court, from whom the same was received, and by virtue of what process, shall be punished as prescribed in the preceding article.

Town or city officer failing to report collections. (Act May 1, 1874, p. 182.)

ART. 258. Any town or city marshal, or constable, or other officer or person who may collect money, other than taxes, for the use of such town or city who shall fail to report in writing, and under oath, to the mayor and board of aldermen, or common council, of such town or city, on the first Monday of each month, the amount of money that may have come into his hands during the month preceding such report, for the use of such town or city, from whom the same was collected, and by virtue of what process, shall be punished as prescribed in article 256.

Commissioners' court failing to make quarterly statements, etc. (Act March 8, 1873, p. 13.)

ART. 259. If the commissioners' court of any county in this state shall willfully fail, neglect, or refuse to make, or cause to be made, a tabular statement of the assets, expenditures, and indebtedness of such county, at each quarter of the year, specifying therein the names of creditors, and the items of indebtedness with their respective dates of accrual, and also the names of persons to whom moneys have been paid, with the amounts paid each, during the quarter for which such statement is prepared; or shall willfully fail, neglect or refuse to post such statement made on the first day of July of each year, at the court-house door of their county; or shall so fail, neglect or refuse to publish such quarterly statement made on the first day of January of each year, in some newspaper published in their county, or by posting the same at four public places in the county, if there be no newspaper published therein, the members of said court so failing, neglecting, or refusing, shall be fined in any sum not less than twenty nor more than one hundred dollars.

County treasurer failing to report. (Act March 8, 1873, p. 14.)

ART. 260. If any county treasurer in this state shall fail, neglect, or refuse to furnish to the commissioners' court of his county, upon demand, a tabular statement of the amount of county funds by him received from any given time, the amount on hand, the amounts paid out, to whom paid,

on what account, from what fund taken, and the kinds of funds received and disbursed, he shall be fined in any sum not less than one hundred nor more than five hundred dollars, and, in addition thereto, he may be punished for contempt by said commissioners' court.

ART. 261. Any clerk of the county or district court in this state who shall fail to provide and keep in his office, as part of the records thereof, well-bound alphabetical indexes and cross-indexes of the names of the parties to all suits disposed of or pending in his court, together with a reference opposite each party's name to the page of the minute book upon which is entered the final judgment in each case, shall be punished by fine not less than fifty nor more than one hundred dollars for each offense. Each month's failure shall constitute a separate offense.

Clerk failing to keep indexes. (Act June 21, 1876, p. 25.)

ART. 262. If the clerk of the county court of any county in this state, the land records or records of titles in which have been burned or otherwise destroyed, or any deputy of such clerk, shall permit any deed filed for record in his office to be withdrawn within twelve months after the same is filed, he shall be fined not less than one hundred nor more than five hundred dollars, and may, in addition thereto, be imprisoned in the county jail for a period of time not to exceed one year.

Clerk permitting withdrawal of deeds, when records are burned. (Act Aug. 21, 1876, p. 252.)

ART. 263. The preceding article shall not apply to deeds executed, or purporting to have been executed, subsequent to the destruction of such land records or records of titles.

To what deeds not applicable. (Act Aug. 21, 1876, p. 252.)

ART. 264. Any county judge in this state who shall practice, or offer or attempt to practice as an attorney or counselor at law, in any county court, or court of a justice of the peace, shall be fined not less than one hundred nor more than five hundred dollars.

County judge practicing in inferior courts. (Act Aug. 19, 1876, p. 216.)

NOTE.—See R. C. S., article 1136, authorizing county judges to practice as attorneys in justices' courts.—L.

ART. 265. If the clerk of any county court or other officer, authorized by law to issue a license for marriage, shall, without the consent of the parent or guardian of the party applying, issue a marriage license to a male person under the age of twenty-one years, or to a female under the age of eighteen years, he shall be fined not exceeding one thousand dollars.

Issuing marriage license to minor, etc. (Act Feb. 11, 1860, p. 101.) P.C. 791a.

ART. 266. Where both parents of any minor may be alive, the consent of the father alone shall be sufficient to authorize the issuance of license to the minor.

Father's consent sufficient, when. (Act Feb. 12, 1858, p. 186.) P.C. 791b.

ART. 267. If any district or county surveyor in this state, who has been paid his fees for making and recording a survey, shall fail or unnecessarily delay to correct the field-notes of such survey, upon the request of the commissioner of the general land office, or of the party interested, and return the same to the general land office, when such field-notes have been returned to him by such commissioner for correction, shall be fined in a sum not less than double nor more than four times the amount of the fees originally paid him for such survey.

Surveyor failing to return corrected field-notes. (Act Oct. 24, 1871, p. 12.)

ART. 268. Any district or county surveyor, who shall fail or refuse to make a survey upon a homestead application, within one month after such application is made, or who shall fail to record the field-notes of such survey, and forward certified copies thereof and all other papers relating thereto to the general land office, within one month after such survey is made, or who shall fail to correct any field-notes of such surveys that may be returned to him for correction by the commissioner of the general land office, within ten days after receipt thereof, or who shall charge, demand, or receive higher fees than those allowed by law for making, recording, and certifying to such survey, shall be fined not less than ten and not more than one hundred dollars for each offense.

Surveyor failing or refusing to make survey on homestead application, etc. (Act May 26, 1873, p. 102.)

ART. 269. No surveyor shall be punishable criminally for a failure or refusal to make a survey upon a homestead application, or for a failure to

Not applicable, when.

record and return the field-notes of any such survey, unless the fees allowed by law for such services shall have been first tendered him.

Surveyor willfully altering lines.  
(Act May 4, 1874, p. 220.)

ART. 270. If any surveyor or other person shall, without authority of law, willfully destroy, deface, alter, or change any established line, corner, or line or bearing tree, of any legal survey, or shall willfully make any new line or corner on any established legal survey, without authority of law, he shall be fined not less than one hundred nor more than five hundred dollars.

#### V. BARRATRY.

"Barratry" defined and punished.  
(Act Aug. 21, 1876, p. 227.)

ART. 271. If any person shall willfully instigate, maintain, excite, prosecute or encourage the bringing of any suit or suits at law, or equity, in any court in this state, in which such person has no interest, with the intent to distress or harrass the defendant therein, or shall willfully bring or prosecute any false suit or suits at law or equity, of his own, with the intent to distress or harrass the defendant therein, he shall be deemed guilty of barratry, and shall be fined in any sum not exceeding five hundred dollars, and, in addition thereto, may be imprisoned in the county jail not exceeding one year.

#### VI. COMPOUNDING CRIME.

Agreeing with offenders not to prosecute.

ART. 272. If any person has knowledge that an offense against the penal laws of this state has been committed, and shall agree with the offender, either directly or indirectly, not to prosecute or inform on him in consideration of money or other valuable thing paid, delivered, or promised to him by such offender, or other person for him, he shall be fined not less than one hundred nor more than one thousand dollars.

#### VII. MALICIOUS PROSECUTION.

"Malicious prosecution" defined and punished.

ART. 273. If any person in this state, for the purpose of extorting money from another, or the payment or security of a debt due him by such other person, or with intent to vex, harrass, or injure such person, shall institute or cause to be instituted any criminal prosecution against such other person, he shall be deemed guilty of malicious prosecution, and, upon conviction, shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in the county jail not less than one month nor more than one year.

#### VIII. FALSE PERSONATION.

Falsely pretending to be an officer.  
(Act Nov. 12, 1866, p. 201.)

ART. 274. Any person who shall falsely assume or pretend to be a judicial or executive officer of this state, or a justice of the peace, sheriff, deputy sheriff, constable, or any other judicial or ministerial officer of any county in the state, and shall take upon himself to act as such, shall be punished by imprisonment in the county jail for a term not exceeding six months, or by fine not exceeding five hundred dollars.

#### IX. GENERAL PROVISIONS.

Willful neglect of official duty.  
(Act May 26, 1864, pp. 7, 8.)  
P.C. 348a.

ART. 275. If any officer of the law shall willfully or negligently fail to perform any duty imposed on him by the Penal Code or Code of Criminal Procedure, he shall, when the act or omission is not otherwise defined, be deemed guilty of a misdemeanor and be punished as prescribed in the succeeding article.

General penalty, in the absence of any other.  
(Act March 5, 1863, p. 12.)  
P.C. 349.

ART. 276. Whenever, in the Penal Code or Code of Criminal Procedure, it is declared that an officer is guilty of an offense on account of any particular act or omission, and there is not in the Penal Code any punishment assigned for the same, such officer shall be deemed guilty of a misdemeanor and shall be fined not exceeding two hundred dollars.

Malfeasance, when not otherwise designated.  
F.C. 350.

ART. 277. All offenses committed by officers of the law, when not otherwise designated, are known under the general name of *malfeasance in office*.

"Officer" defined.  
F.C. 351.

ART. 278. By an "officer of the law," as used in the preceding article, is meant any magistrate, peace officer, or clerk of a court.

TITLE IX.

Of Offenses Against the Public Peace.

CHAPTER ONE.

UNLAWFUL ASSEMBLIES.

Article	Article
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To prevent elections..... 280	To prevent any person pursuing his labor... 289
To prevent execution of law, etc..... 281	To frighten any one by disguise..... 290
To effect the rescue of a capital felon..... 282	To disturb families..... 291
To effect the rescue of a felon..... 283	To effect any other illegal object..... 292
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ARTICLE 279. An "unlawful assembly" is the meeting of three or more persons, with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right, or to disturb him in the enjoyment thereof. "Unlawful assembly" defined. P.C. 355.

ART. 280. If the purpose of the unlawful assembly is to prevent the holding of any public election, or to prevent any particular person, or number of persons, from voting at a public election, the punishment shall be that which is prescribed in article 160. To prevent elections. P.C. 356.

ART. 281. If the purpose of the unlawful assembly be to oppose or prevent the execution or enforcement of any law of the state, or the lawful decree or judgment of a court in a civil action, the punishment shall be a fine not exceeding five hundred dollars. To prevent execution of law, etc. P.C. 357.

ART. 282. If the purpose of the unlawful assembly be to effect the rescue of a prisoner lawfully convicted of a capital offense, the punishment shall be fine not exceeding one thousand dollars. To effect the rescue of capital felon. P.C. 358.

ART. 283. If the purpose of the unlawful assembly be to effect the rescue of any person lawfully convicted of a felony less than capital, the punishment shall be fine not exceeding five hundred dollars. To effect the rescue of a felon. P.C. 359.

ART. 284. If the purpose of the unlawful assembly be to rescue any person arrested or imprisoned for a capital offense before trial, the punishment shall be fine not exceeding five hundred dollars. To rescue one accused of capital felony. P.C. 360.

ART. 285. If the purpose of the unlawful assembly be to rescue any person lawfully arrested or imprisoned for any felony less than capital, the punishment shall be fine not exceeding three hundred dollars. To rescue one accused of lesser felony. P.C. 361.

ART. 286. If the purpose of the unlawful assembly be to rescue a person accused of a misdemeanor, the punishment shall be fine not exceeding two hundred dollars. To rescue one accused of misdemeanor. P.C. 362.

ART. 287. If the purpose of the unlawful assembly be to prevent or oppose the sitting of any lawful court, board of arbitrators or referees, the punishment shall be fine not exceeding one thousand dollars. To prevent the sitting of any tribunal. P.C. 362a.

ART. 288. If the purpose of the unlawful assembly be to prevent the collection of taxes, or other money due the state, the punishment shall be fine not exceeding five hundred dollars. To prevent the collection of taxes. P.C. 363.

ART. 289. If the purpose of the unlawful assembly be to prevent any person from pursuing any labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any labor. To prevent any person from pursuing his labor.

manner with the labor or employment of another, the punishment shall be by fine not exceeding five hundred dollars.

To frighten any one by disguise. (Act Nov. 6, 1871, p. 19.) P.C. 363a.

ART. 290. If the purpose of the unlawful assembly be to alarm and frighten any person by appearing in disguise, so that the real persons so acting and assembling can not be readily known, and by using language or gestures calculated to produce in such person the fear of bodily harm, the punishment shall be by fine not exceeding five hundred dollars.

To disturb families.

ART. 291. If the purpose of the unlawful assembly be to repair to the vicinity of any residence, and to disturb the inmates thereof by loud, unusual or unseemly noises, or by the discharge of fire-arms, the punishment shall be by fine not exceeding five hundred dollars. A residence may be either a public or private house.

To effect any other illegal object. P.C. 364.

ART. 292. If the purpose of the unlawful assembly be to effect any illegal object other than those mentioned in the preceding articles of this chapter, all persons engaged therein shall be liable to fine not exceeding two hundred dollars.

Lawful meetings not included. P.C. 365.

ART. 293. No public meeting for the purpose of exercising any political, religious or other lawful rights; no assembly for the purpose of lawful amusement or recreation, is within the meaning of this chapter.

Lawful meetings included, if unlawful purpose is afterward agreed on. P.C. 376.

ART. 294. Where the persons engaged in any unlawful assembly met at first for a lawful purpose, and afterward agreed upon an unlawful purpose, they are equally guilty of the offense defined in article 279.

## CHAPTER TWO.

### RIOTS.

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"Riot" defined. P.C. 366.

ARTICLE 295. If the persons unlawfully assembled together do, or attempt to do, any illegal act, all those engaged in such illegal act are guilty of riot.

To prevent collection of taxes P.C. 367.

ART. 296. If the purpose of a riot be to prevent the collection of taxes or other money due the state, any person engaged therein shall be punished by fine, not less than two hundred dollars, and not exceeding one thousand dollars, although the purpose of the riot be not effected; and if such illegal purpose be effected, in addition thereto, imprisonment in the county jail not exceeding two years may be added.

Execution of law. P.C. 368.

ART. 297. If any person, by engaging in a riot, shall prevent the execution or enforcement of any law of the state, or the lawful decree or judgment of any court in a civil cause, he shall be punished by imprisonment in the county jail not exceeding two years, and by fine not less than two hundred nor more than one thousand dollars.

Rescue of felon under sentence of death. P.C. 369.

ART. 298. If any person, by engaging in a riot, shall rescue another lawfully convicted, or under lawful sentence of death, he shall be punished by imprisonment in the penitentiary not less than five nor more than ten years.

Rescue of felon on, less than capital. P.C. 370.

ART. 299. If any person, by engaging in a riot, shall rescue any prisoner lawfully convicted of felony less than capital, or lawfully under sentence for such offense, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years.

ART. 300. If any person, by engaging in a riot, shall rescue any prisoner, lawfully convicted of a misdemeanor, he shall be punished by imprisonment in the county jail not less than six months nor more than two years.

Rescue of one convicted of misdemeanor.

ART. 301. If any person, by engaging in a riot, shall rescue any prisoner lawfully arrested or imprisoned for a capital felony, he shall be punished by confinement in the penitentiary not less than two nor more than seven years.

Rescue of one imprisoned for capital felony.  
P.C. 371.

ART. 302. If any person, by engaging in a riot, shall rescue any prisoner lawfully arrested or imprisoned for a felony less than capital, he shall be punished by confinement in the penitentiary not less than two nor more than seven years.

Felony less than capital.  
(Act Feb. 12, 1858, p. 164.)  
P.C. 372.

ART. 303. If any person, by engaging in a riot, shall rescue any prisoner lawfully arrested or imprisoned for a misdemeanor, he shall be punished by confinement in the county jail not less than six nor more than twelve months.

Misdemeanor.

ART. 304. If any person, by engaging in a riot, shall prevent any other person from pursuing any labor, occupation or employment, or intimidate any other person from following his daily avocation, or interfere in any manner with the labor or employment of another, he shall be punished by confinement in the county jail not less than six months nor more than one year.

Preventing any person from labor.

ART. 305. If any person, by engaging in a riot, shall disturb the inmates of any residence by loud, unusual or unseemly noises, or by the discharge of fire-arms in the immediate vicinity of such residence, he shall be punished by fine not less than fifty nor more than five hundred dollars. A residence may be either a public or private house.

Disturbing residence.

ART. 306. If any person, by engaging in a riot, shall commit any illegal act, other than those mentioned in the ten preceding articles, he shall, in addition to receiving the punishment affixed to such illegal act by other provisions of this Code, be also punished by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

Committing any other illegal act.  
P.C. 373.

ART. 307. When the purpose of the riot was to effect any of the illegal acts mentioned in the preceding articles of this chapter, and such unlawful object is not effected, the punishment may, in the discretion of the jury, be diminished to half the penalty affixed to such riot where the illegal purpose was effected.

Half penalty when object not accomplished.  
P.C. 374.

ART. 308. A person engaged in any riot, whereby an illegal act is committed, shall be deemed guilty of the offense of riot, according to the character and degree of such offense, whether the said illegal act was in fact perpetrated by him, or by those with whom he is participating.

All participants guilty.  
P.C. 375.

ART. 309. Where the assembly was at first lawful, and the persons so assembled afterward agree to join in the commission of an act which would amount to a riot, if it had been the original purpose of the meeting, all those who do not retire when the change of purpose is known, are guilty of riot.

Where assembly was at first lawful.  
P.C. 377.

ART. 310. Any one person engaged in an unlawful assembly or riot may be prosecuted and convicted before the others are arrested, but the indictment or information must state, and it must be proved on the trial, that three or more persons were assembled, and their names given, if known; if not known, it must be so alleged.

One may be prosecuted before others are arrested.  
P.C. 378.

ART. 311. The indictment or information must likewise state the illegal act which was the object of the meeting, or which they proceeded to do, if the assembly was originally lawful.

Indictment, requisites of.  
P.C. 379.

ART. 312. If any persons shall be unlawfully or riotously assembled together, it shall be the duty of any magistrate or peace officer, so soon as it may come to his knowledge, to go to the place of such unlawful or riotous assembly, and command the persons assembled to disperse; and all

Duty of officers in case of riot.  
P.C. 380.

who continue so unlawfully assembled, or engaged in a riot, after being warned to disperse, shall be punished by the addition of one-half the penalty to which they would otherwise be liable, if no such warning had been given.

## CHAPTER THREE.

### AFFRAYS AND DISTURBANCES OF THE PEACE.

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"Affray" defined.  
P.C. 381.

Disturbance of the peace.  
(Act June 20, 1876, p. 24.)  
P.C. 382.

"Public place" defined.  
P.C. 383.

Shooting in public place.  
(Act Nov. 12, 1866, p. 210.)

Horse-racing on public road or street.  
(Act May 19, 1873, pp. 83-4.)

ARTICLE 313. If any two or more persons shall fight together in a public place, they shall be punished by fine not exceeding one hundred dollars.

ART. 314. If any person shall go into any public place, or into or near any private house, or along any public street or highway near any private house, and shall use loud and vociferous or obscene, vulgar or indecent language, or swear, or curse, or expose his person, or rudely display any pistol or other deadly weapon in such public place, or upon such public street or highway, or near such private house, in a manner calculated to disturb the inhabitants thereof, he shall be fined in a sum not exceeding one hundred dollars.

ART. 315. A public place within the meaning of the two preceding articles, is any public road, street or alley, of a town or city, inn, tavern, store, grocery, work-shop, or any place to which people commonly resort for purposes of business, recreation or amusement.

ART. 316. If any person shall discharge any gun, pistol, or fire-arms of any description, on or across any public square, street or alley in any city, town or village in this state, he shall be fined in a sum not exceeding one hundred dollars.

ART. 317. Any person who shall run, or be in any way concerned in running any horse race in, along, or across any public square, street or alley in any city, town or village, or in, along or across any public road within this state, shall be fined in a sum not less than twenty-five nor more than one hundred dollars.

## CHAPTER FOUR.

### UNLAWFULLY CARRYING ARMS.

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Unlawfully carrying arms.  
(Act April 12, 1871, p. 25.)

Not applicable when and to whom.  
(Act April 12, 1871, p. 25.)

ARTICLE 318. If any person in this state shall carry on or about his person, saddle, or in his saddle-bags, any pistol, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by fine of not less than twenty-five nor more than one hundred dollars; and, in addition thereto, shall forfeit to the county in which he is convicted, the weapon or weapons so carried.

ART. 319. The preceding article shall not apply to a person in actual service as a militiaman, nor to a peace officer or policeman, or person summoned to his aid, nor to a revenue or other civil officer engaged in the discharge of official duty, nor to the carrying of arms on one's own prem-

ises or place of business, nor to persons traveling, nor to one who has reasonable ground for fearing an unlawful attack upon his person, and the danger is so imminent and threatening as not to admit of the arrest of the party about to make such attack, upon legal process.

ART. 320. If any person shall go into any church or religious assembly, any school room, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show, or public exhibition of any kind, or into a ball-room, social party, or social gathering, or to any election precinct on the day or days of any election, where any portion of the people of this state are collected to vote at any election, or to any other place where people may be assembled to muster, or to perform any other public duty, or to any other public assembly, and shall have or carry about his person a pistol or other fire-arm, dirk, dagger, slung-shot, sword-cane, spear, brass-knuckles, bowie-knife, or any other kind of a knife manufactured and sold for the purposes of offense and defense, he shall be punished by fine not less than fifty nor more than five hundred dollars, and shall forfeit to the county the weapon or weapons so found on his person.

Carrying arms  
in church or  
other assembly  
(Act April 12,  
1871, p. 25.)

ART. 321. The preceding article shall not apply to peace officers, or other persons authorized or permitted by law to carry arms at the places therein designated.

Not applicable  
to whom.  
(Act April 12,  
1871, p. 25.)

ART. 322. Any person violating any of the provisions of articles 318 and 320, may be arrested without warrant by any peace officer, and carried before the nearest justice of the peace for trial; and any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some credible person, shall be punished by fine not exceeding five hundred dollars.

Arrest without  
warrant.  
Officer failing  
punished.  
(Act April 12,  
1871, p. 26.)

ART. 323. The provisions of this chapter shall not apply to or be enforced in any county which the governor may designate, by proclamation, as a frontier county and liable to incursions by hostile Indians.

Not applicable  
to frontier  
counties.  
(Act April 12,  
1871, p. 26.)

TITLE X.

Offenses Against Public Morals, Decency and Chastity.

CHAPTER ONE.

UNLAWFUL MARRIAGES.

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"Bigamy" defined and punished. P.C. 384. ART. 324. If any person who has a former husband or wife living, shall marry another in this state, such person shall be punished by imprisonment in the penitentiary for a term not exceeding three years.

Preceding article not applicable, when. P.C. 385. ART. 325. The provisions of the preceding article shall not extend to any person whose husband or wife shall have been continually remaining out of the state, or shall have voluntarily withdrawn from the other and remained absent for five years, the person marrying again not knowing the other to be living within that time. Nor shall the provisions of said article extend to any person who has been legally divorced from the bonds of matrimony.

Intermarriage of whites and blacks. ART. 326. If any white person and negro shall knowingly intermarry with each other within this state, or having so intermarried, in or out of the state, shall continue to live together as man and wife within this state, they shall be punished by confinement in the penitentiary for a term not less than two nor more than five years.

"Negro" and "white person" defined. ART. 327. The term "negro" as used in the preceding article, includes also a person of mixed blood descended from negro ancestry to the third generation inclusive, although one ancestor of each generation may have been a white person. All persons not included in the definition of "negro" shall be deemed a white person within the meaning of this article.

Proof of marriage. P.C. 387. ART. 328. In trials for the offenses named in the preceding articles of this chapter, proof of marriage by mere reputation shall not be sufficient.

CHAPTER TWO.

INCEST.

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Same subject.....	331		

Punishment. P.C. 388. ART. 329. All persons who are forbidden to marry by the succeeding articles, who shall intermarry or carnally know each other, shall be punished by imprisonment in the penitentiary not less than two nor more than ten years.

**ART. 330.** No man shall marry his mother, his father's sister or half-sister, his mother's sister or half-sister, his daughter, the daughter of his father, mother, brother, or sister, or of his half-brother or sister, the daughter of his son or daughter, his father's widow, his son's widow, his wife's daughter, or the daughter of his wife's son or daughter.

Certain marriages prohibited.  
P.C. 339.

**ART. 331.** No woman shall marry her father, her father's brother or half-brother, her mother's brother or half-brother, her own brother or half-brother, her son, the son of her brother or sister, or of her half-brother or half-sister, the son of her son or daughter, her mother's husband after the death of her mother, her daughter's husband after the death of her daughter, her husband's son, the son of her husband's son or daughter.

Same subject.  
P.C. 330.

**ART. 332.** Upon a trial for incest, the fact of the relationship between the parties may be proved in the manner in which that fact is established in civil suits, and proof of cohabitation or carnal knowledge shall be in all cases sufficient, without proof of marriage.

Relationship, how proved. Proof of marriage unnecessary.  
P.C. 331.

### CHAPTER THREE.

#### OF ADULTERY AND FORNICATION.

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**ARTICLE 333.** Adultery is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other, without living together, of a man and woman when either is lawfully married to some other person.

"Adultery" defined.

**ART. 334.** The proof of marriage in such cases may be made by the production of the original marriage license and return thereon, or a certified copy thereof, or by the testimony of any person who was present at such marriage, or who has known the husband and wife to live together as married persons.

Proof of marriage.

**ART. 335.** When the offense of adultery has been committed, both parties are guilty, although only one of them may be married.

Both parties guilty.

**ART. 336.** Every person guilty of adultery shall be punished by fine not less than one hundred nor more than one thousand dollars.

Punishment for adultery (Act Feb. 12, 1858, p. 165.)  
P.C. 332.

**ART. 337.** Fornication is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other without living together, of a man and woman, both being unmarried.

"Fornication" defined.

**ART. 338.** Every person guilty of fornication, shall be punished by fine not less than fifty nor more than five hundred dollars.

Punishment for fornication.

### CHAPTER FOUR.

#### DISORDERLY HOUSES.

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Includes any room, etc.....	340		

**ARTICLE 339.** A disorderly house is one kept for the purpose of public prostitution, or as a common resort for prostitutes and vagabonds.

"Disorderly house" defined. (Act Feb. 12, 1858, p. 165.)  
P.C. 336.

**ART. 340.** Any room or part of a building, or other place appropriated or used for either of the purposes above enumerated, is a disorderly house within the meaning of this chapter.

Includes any room, etc.  
P.C. 337.

Punishment for keeping. (Act Feb. 12, 1858, p. 165.) P.C. 398.

ART. 341. Any person who shall keep, or be in any way concerned in keeping a disorderly house, as defined above, shall be punished by fine not less than one hundred nor more than five hundred dollars.

CHAPTER FIVE.

MISCELLANEOUS OFFENSES.

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"Sodomy" defined and punished. (Act Feb. 11, 1860, p. 97.) P.C. 399c.

ARTICLE 342. If any person shall commit with mankind or beast the abominable and detestable crime against nature, he shall be deemed guilty of sodomy, and on conviction thereof, he shall be punished by confinement in the penitentiary for not less than five nor more than fifteen years.

Indecent publications and exposures. P.C. 399.

ART. 343. If any person shall make, publish or print, any indecent and obscene print, picture or written composition, manifestly designed to corrupt the morals of youth, or shall designedly make any obscene and indecent exhibition of his own or the person of another, in public, he shall be fined not exceeding one hundred dollars.

Desecration of graves. (Act Feb. 12, 1858, p. 166.) P.C. 399a.

ART. 344. If any person shall wrongfully destroy, mutilate, deface, injure, or remove any tomb, monument, grave-stone, or other structure in any place used or intended for the burial of the dead, or any fence, railing, or curb, for the protection of such structure, or any inclosure for any such place of burial, or shall wrongfully injure, cut, remove, or destroy any tree or shrub growing within any such inclosure, he shall be punished by imprisonment in jail not exceeding six months, or by fine not exceeding five hundred dollars.

Interference with dead bodies. (Act Feb. 12, 1858, p. 166.) P.C. 399b.

ART. 345. If any person not authorized by law, or by a relative or friend, for the purpose of re-interment, shall disinter, remove or carry away any human body, or the remains thereof, or shall conceal the same, knowing it to be so illegally disinterred, he shall be punished by fine not exceeding two thousand dollars.

TITLE XI.

Of Offenses Against Public Policy and Economy.

CHAPTER ONE.

ILLEGAL BANKING AND PASSING SPURIOUS MONEY.

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ARTICLE 346. If any person within this state shall issue any bill, promissory note, check, or other paper intended to circulate as money, he shall be fined not less than ten dollars nor more than fifty dollars for each bill, promissory note, check, or other paper so issued. Issuing bills to pass as money. P. C. 400.

ART. 347. Any officer of any banking company or body corporate who signs his own name, or that of another, by the authority of such other, to any bank bill, promissory note, check, or other paper, being evidence of a promise to pay, and intended to circulate as money, is guilty of the offense punishable by the preceding article. Includes corporations. P. C. 401.

ART. 348. Any person who may bring into this state any bank bill, purporting to be issued by any bank in any other state or territory of the Union, or in any foreign country, and shall sign or indorse the same to be circulated as money in this state, shall be deemed guilty of the offense mentioned in article 346. Also indorsement of foreign bills. P. C. 402.

ART. 349. If any person shall fraudulently pass or transfer, or offer to pass or transfer, any paper purporting to be bank paper, and to be issued by any bank which having once existed, has since broken, or the money of the same become valueless, he shall be punished by confinement in the penitentiary not less than two nor more than five years. Passing paper of broken bank. (Act Feb. 12, 1858, p. 166.) P. C. 403.

ART. 350. The provisions of this chapter shall not apply to any bank incorporated under the laws of the United States, nor to bills issued by such bank. Not applicable to United States banks.

CHAPTER TWO.

OF LOTTERIES AND RAFFLES.

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ARTICLE 351. If any person shall establish a lottery, or dispose of any estate, real or personal, by lottery, he shall be fined not less than one hundred nor more than one thousand dollars. Establishing a lottery, etc. P. C. 404.

ART. 352. If any person shall sell, offer for sale, or keep for sale, any ticket or part ticket in any lottery, he shall be fined not less than ten nor more than fifty dollars. Selling lottery tickets. P. C. 405.

Raffle for over \$500. P.C. 406.

ART. 353. If any person shall establish a raffle for, or dispose by raffle of any estate, real or personal, exceeding five hundred dollars in value, he shall be fined not less than one hundred nor more than one thousand dollars.

Selling ticket in raffle for over \$500. P.C. 407.

ART. 354. If any person shall offer for sale, or keep for sale, any chance, ticket, or part ticket in any raffle of estate, real or personal, exceeding five hundred dollars in value, he shall be fined not less than ten nor more than fifty dollars.

## CHAPTER THREE.

### GAMING.

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Playing cards in a public place. P.C. 409.

ARTICLE 355. If any person shall play at any game with cards, at any house for retailing spirituous liquors, store-house, tavern, inn, or any other public house, or in any street, highway, or other public place, or in any out-house where people resort, he shall be fined not less than ten nor more than twenty-five dollars.

What included in preceding article. (Act Feb. 11, 1866, pp. 97-8.) P.C. 410.

ART. 356. All houses commonly known as public, and all gaming-houses, are included within the meaning of the preceding article. Any room attached to such public house and commonly used for gaming, is also included, whether the same be kept closed or open. A private room of an inn or tavern is not within the meaning of public places, unless such room is commonly used for gaming; nor is a private business office or a private residence to be construed as within the meaning of a public house or place; *provided*, said private residence shall not be a house for retailing spirituous liquors.

Offense complete without betting. (Act Feb. 11, 1860, p. 98.) P.C. 411.

ART. 357. In prosecutions under the two preceding articles, it shall not be necessary for the state to prove that any money or article of value, or the representative of either, was bet at such game. The offense is complete without such proof.

Keeping or exhibiting table or bank. (Act April 9, 1873, p. 36.) P.C. 412.

ART. 358. If any person shall keep or exhibit, for the purpose of gaming, any gaming-table or bank of any name or description whatever, or any table or bank used for gaming which has no name, or pigeon-hole table, or jenny lind table, or any nine or ten-pin alley, used for gaming—and such pigeon-hole table or jenny lind table, or nine or ten-pin alley, shall be considered as used for gaming, if the table fees or alley fees, or money or anything of value is bet thereon—or shall be in any manner interested in keeping or exhibiting any such table, or bank, or nine or ten-pin alley at any place, he shall be fined not less than twenty-five nor more than one hundred dollars, and may be confined in the county jail not more than thirty days.

Table or bank includes what. P.C. 413.

ART. 359. It being intended by the foregoing article to include every species of gaming device known by the name of table or bank of every kind whatever, this provision shall be construed to include any and all games which in common language are said to be *played, dealt, kept or exhibited*.

Games specifically enumerated. P.C. 414.

ART. 360. Lest any misapprehension should arise as to whether certain games are included within the meaning of the foregoing articles, it is declared that the following games are within the meaning and intention of said articles, viz: "*faro*," "*monte*," "*vingt-et-un*" "*rouge et noir*,"

“*roulette*,” “A B C,” “chuck-a-luck,” “*keno*,” “pool” and “*rondo*,” but the enumeration of these games specially shall not exclude any other properly within the meaning of the two preceding articles. Any game played for money upon a billiard table, or table resembling a billiard table, other than the game of billiards licensed by law, is punishable under the provisions of this chapter.

ART. 361. In any indictment or information for the class of offenses named in the three preceding articles, it is sufficient to state that the person accused kept a table or bank for gaming, or exhibited a table or bank for gaming, without giving the name or description thereof, and without stating that the table or bank, or gaming device, was without any name, or that the name was unknown. Indictment.  
P.C. 415.

ART. 362. In prosecutions under articles 358, 359 and 360, it shall be sufficient to prove that any game therein mentioned was *played, dealt* or *exhibited*, without proving that money or other articles of value were won or lost thereon. Proof.  
P.C. 416.

ART. 363. The words “played” and “dealt,” have the meaning attached to them in common language. The word “exhibited” is intended to signify the act of displaying the bank or game, for the purpose of obtaining bettors. “Played,”  
“dealt,” and  
“exhibited”  
defined.  
P.C. 417.

ART. 364. If any person shall bet at any gaming-table, or bank, or pigeon-hole, or jenny lind table, or nine or ten-pin alley, such as are mentioned in the six preceding articles, he shall be fined not less than ten dollars nor more than twenty-five dollars. Betting at  
table or bank.  
(Act April 9,  
1873, p. 36.)  
P.C. 418.

ART. 365. If any person shall permit any game prohibited by the provisions of this chapter to be played in his house, or a house under his control, he shall be fined not less than ten nor more than one hundred dollars. Permitting  
house to be  
used for  
gaming.  
P.C. 419.

ART. 366. If any person shall rent to another a room or house for the purpose of being used as a place for playing, dealing or exhibiting any of the games prohibited by the provisions of this chapter, he shall be fined not less than twenty-five nor more than one hundred dollars. Renting house  
for same pur-  
pose.  
P.C. 420.

ART. 367. Any court, officer or tribunal having jurisdiction of the offenses enumerated in this chapter, or any district or county attorney, may subpoena persons and compel their attendance as witnesses to testify as to violations of any of the provisions of the foregoing articles. Any persons so summoned and examined shall not be liable to prosecution for any violation of said articles about which he may testify, and for any offense enumerated in this chapter a conviction may be had upon the unsupported evidence of an accomplice or participant. Procedure in  
gaming cases.  
P.C. 420a.

## CHAPTER FOUR.

### NEGLECT OF OFFICERS TO ARREST OR PROSECUTE IN GAMING CASES.

Justice of the peace, etc., failing to prosecute.....	Article 368	Peace officer failing to inform.....	Article 369
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ARTICLE 368. If any justice of the peace, mayor or recorder, shall know the fact that an offense against the gaming laws has been committed by any person, and shall fail or neglect to cause such person to be arrested and prosecuted for the same, he shall be punished by fine not less than twenty-five nor more than one hundred dollars. Justice of the  
peace, etc., fail-  
ing to prose-  
cute.  
(Act Feb. 12,  
1858, p. 137.)  
P.C. 423a.

ART. 369. If any peace officer shall know that any person has committed an offense against the gaming laws, and shall neglect or fail to give information thereof to some justice of the peace, mayor or recorder, hav- Peace officer  
failing to  
inform.  
(Act Feb. 12,  
1858, p. 137.)  
P.C. 423a.

ing jurisdiction to try such offense, he shall be punished by fine not less than twenty-five nor more than one hundred dollars.

"Offense against gaming laws" defined. *Id.*  
P.C. 423c.

ART. 370. By the term "offense against the gaming laws," as used in the two preceding articles, is meant any offense included within the provisions of chapter 3 of this title.

## CHAPTER FIVE.

### BETTING ON ELECTIONS.

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Penalty.  
(Act Feb. 12,  
1858, p. 167.)  
P.C. 421.

ARTICLE 371. If any person shall, whether before or after the happening of any public election, held within this state, wager or bet, in any manner whatever, upon the result of any such election, he shall be fined not less than twenty-five nor more than one thousand dollars.

"Public election" defined.  
P.C. 422.

ART. 372. A public election, within the meaning of the preceding article, is any election for a public officer under the authority of the constitution and laws of the United States or of this state.

What "bet or wager" includes.  
P.C. 423.

ART. 373. The bet or wager may be of money, or of any article of value; and any device in the form of purchase or sale, or in any other form, made for the purpose of concealing the true intention of the parties, is equal within the meaning of a bet or wager.

## CHAPTER SIX.

### UNLAWFULLY SELLING INTOXICATING LIQUORS.

Selling liquor to wild Indians.....	Article 374	Sacramental wine and medicine excepted... ..	Article 379
Selling to Choctaws and Chickasaws.....	375	Evidence when persons are jointly indicted... ..	380
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Selling liquor to wild Indians.  
(Act Oct. 31,  
1866, p. 71.)  
P.C. 408.

ARTICLE 374. If any person shall sell, give or barter, or cause to be sold, given or bartered, any ardent spirits, or any spirituous or intoxicating liquors or fire-arms, or ammunition, to any Indian of the wild or unfriendly tribes, he shall be fined not less than ten nor more than one hundred dollars.

Selling to Choctaws or Chickasaws.  
(Act Feb. 12,  
1868, pp. 157-8.)

ART. 375. If any person shall sell, give or barter, or cause to be sold, given or bartered, any spirituous, vinous or intoxicating liquor to an Indian of the Choctaw or Chickasaw territory, he shall be fined not less than fifty nor more than one hundred dollars.

Selling to minors.

ART. 376. Any person who shall knowingly sell or give, or cause to be sold or given, any spirituous, vinous or intoxicating liquor, to any other person under the age of twenty-one years, without the written consent of the parent or guardian of such minor, or some one standing in their place or stead, shall be fined not less than twenty-five nor more than one hundred dollars.

Selling and permitting same drank on premises.  
(Act Feb. 12,  
1858, p. 165.)  
P.C. 423e.

ART. 377. If any person or firm shall sell, or be in any way concerned in selling spirituous, vinous or other intoxicating liquors in quantities of a quart or more, and shall permit the same to be drank at the place or establishment where sold, or at any other place provided by said person or firm for that purpose, he or they shall be punished by fine not less than fifty nor more than two hundred and fifty dollars.

ART. 378. If any person shall sell, exchange or give away any intoxicating liquor whatever, in any county, justice's precinct, city or town in this state, after the qualified voters of such county, justice's precinct, city or town have determined at an election held in accordance with the laws of this state, that the sale or exchange of intoxicating liquors shall be prohibited in such county, justice's precinct, city or town, and the commissioners' court has passed an order to that effect, which order has been duly published in accordance with law, he shall be fined in a sum not less than twenty-five nor more than two hundred dollars.

Selling in prohibited districts. (Act June 24, 1876, p. 26.)

NOTE.—Section 2, chapter 90, acts 1879, amends section 5 of the act of 1876, from which the preceding article was taken, and changes the penalty as follows:

“ Shall be punished by fine in any sum not less than fifty nor more than one hundred dollars, and by imprisonment in the county jail not less than five nor more than thirty days, or by such imprisonment without fine; and any physician who shall issue a prescription for alcoholic stimulants, without a personal examination of the applicant, or where the applicant is not actually sick \* \* \* shall be punished by fine not to exceed one hundred dollars, and by imprisonment in the county jail not less than five nor more than ten days, or by such imprisonment without fine.”—L.

ART. 379. The preceding article shall not apply to the sale of wine for sacramental purposes, nor to the sale of alcoholic stimulants as medicine, in cases of actual sickness, upon the written prescription of a regular practicing physician, certifying upon honor that the same is actually necessary as a medicine.

Sacramental wine and medicine excepted. (Act June 24, 1876, p. 26.)

ART. 380. Where persons are jointly indicted, or otherwise prosecuted for selling liquor in violation of law, it shall be sufficient to show, by general reputation, that they are understood to be members of the firm.

Evidence, when persons are jointly indicted. (Act Feb. 12, 1858, p. 168.) P.C. 423f.

ART. 381. Any one member of a firm may be separately prosecuted for the offense of selling liquor in violation of law.

Member of firm liable personally, etc. (Act Feb. 12, 1858, p. 168.) P.C. 423g.

ART. 382. Where any establishment for the sale of liquor is conducted without the name of the owner being known, any and all persons who may be found selling liquor in such establishment, in violation of law, shall be subject to prosecution as separate offenders.

If owner is unknown, person selling liable. (Act Feb. 12, 1858, p. 168.) P.C. 423h.

ART. 383. When a firm is prosecuted for a violation of the law relating to the sale of liquor, the fine shall be assessed against the parties jointly, but each defendant shall be liable for the whole amount; and in cases of prosecution against a firm, if all the defendants be not arrested, a verdict and judgment for the full amount of the fine may be rendered against any one or more who may be tried.

Procedure in case of firm. (Act Feb. 12, 1858, p. 168.) P.C. 423i.

## CHAPTER SEVEN.

### VAGRANCY.

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“Vagrancy” defined.....		

ARTICLE 384. Every vagrant in this state shall, upon conviction, be fined in any sum not exceeding ten dollars.

Vagrancy punished. (Act Nov. 8, 1866, p. 102.)

ART. 385. The following persons are vagrants within the meaning of the preceding article: 1. An idle person who lives without any means of support, and makes no exertions to obtain a livelihood by honest employment. 2. Any person who strolls idly about the streets of towns or cities, having no local habitation and no honest business or employment. 3. A person who strolls about to tell fortunes or to exhibit tricks not licensed by law. 4. A common prostitute. 5. A professional gambler. 6. Any

“Vagrancy” defined. (Act Nov. 8, 1866, p. 102.)

person who goes about to beg alms who is not afflicted or disabled by a physical malady or misfortune. 7. An habitual drunkard, who abandons, neglects, or refuses to aid in the support of his family.

CHAPTER EIGHT.  
MISCELLANEOUS OFFENSES.

	Article		Article
Pawnbroker failing to comply with the law regulating pawnbrokerae.....	386	Insurance agent doing business without authority.....	387
		Any violation of insurance laws.....	388

Pawnbroker failing to comply with the law. (Act April 28, 1874, p. 154.)

Insurance agent doing business without authority. (Act Feb. 17, 1875, p. 44.)

Any violation of insurance laws. (Acts May 2, 1874, p. 200; Feb. 17, 1875, p. 44.)

ARTICLE 386. If any pawnbroker, or person doing any business as such, shall receive any article in pledge, or sell the same without complying with the laws regulating pawnbrokerae in this state, he shall be punished by fine not less than twenty-five nor more than one hundred dollars.

ART. 387. If any person shall transact the business of life, fire, or marine insurance in this state, either as agent, solicitor or broker, without he, or the company or association he represents, first obtaining a certificate of authority therefor from the commissioner of insurance, statistics and history, he shall be punished by fine not less than five hundred nor more than one thousand dollars, and by imprisonment in the county jail not less than three nor more than six months.

ART. 388. If any person shall violate any provision of the laws of this state regulating the business of life, fire, or marine insurance, he shall be punished by fine not less than five hundred nor more than one thousand dollars.

NOTE.—Section 2, chapter 36, acts 1879, extra session, provides that any one who shall do any of the acts or things mentioned in the first section of the act, for any insurance company, without such company having first complied with the requirements of the laws of the state and received a certificate from the commissioner of insurance, shall be guilty of a misdemeanor, and for the first offense be fined five hundred dollars, and also a sum equal to the state, county and municipal licenses prescribed by law, and be imprisoned in jail for three months, unless the fine and costs be sooner paid; for a second offense he shall be fined one thousand dollars and imprisoned in jail for six months, unless the fine and costs be sooner paid. (See appendix for the act in full.)—L.

## TITLE XII.

### Of Offenses Affecting Public Health.

#### CHAPTER ONE.

##### OCCUPATIONS AND ACTS INJURIOUS TO HEALTH.

Offensive trades and nuisances.....	Article 389	Leaving dead animals in road, etc.....	Article 391
Pollution or obstruction of water courses...	Article 390		

ARTICLE 389. If any person shall carry on any trade, business or occupation injurious to the health of those who reside in the vicinity, or shall suffer any substance which shall have that effect to remain on premises in his possession, he shall be punished by fine not less than ten nor more than one hundred dollars; and each separate day of carrying on such business, trade or occupation, or of permitting such substance to remain on the premises, shall be considered a separate offense.

Offensive trades and nuisances.  
P.C. 424.

ART. 390. If any person shall in any wise pollute or obstruct any water course, lake, pond, marsh, or common sewer, or continue such obstruction or pollution, so as to render the same unwholesome or offensive to the inhabitants of the county, city, town, or neighborhood thereabout, he shall be fined in a sum not exceeding five hundred dollars.

Pollution or obstruction of water courses.  
(Act Feb. 11, 1869, p. 97.)  
P.C. 399d.  
(Act to adopt P.C. & C. C. P.)

ART. 391. If any person shall leave the dead carcass or body of any horse, mule, ox, steer, cow, or other animal, which died in the actual possession of such person, in any public road or highway, or in any street or alley of any village, town or city in this state, or within fifty yards of such public road, highway, street or alley, he shall be fined not less than five nor more than one hundred dollars.

Leaving dead animal in road, etc.  
(Act April 7, 1874, p. 69.)

#### CHAPTER TWO.

##### SALE OF UNWHOLESOME FOOD, DRINK OR MEDICINE.

Selling corrupted or unwholesome substance	Article 392	Selling adulterated liquor.....	Article 394
Adulteration of liquor, food, etc.....	Article 393	Adulteration of medicine.....	Article 395

ARTICLE 392. If any person shall knowingly sell the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, or shall sell any kind of corrupted, diseased or unwholesome substance, whether for food or drink, without making the same fully known to the buyer, he shall be fined not less than twenty nor more than one hundred dollars.

Selling corrupted or unwholesome substance.  
P.C. 425.

ART. 393. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any spirituous, vinous or malt liquor, intended for drink, with any substance injurious to health, he shall be punished by fine not less than fifty nor more than five hundred dollars.

Adulteration of liquor, food, etc.  
P.C. 426.

ART. 394. If any person shall sell any spirituous, vinous or malt liquor intended for drink, knowing the same to be adulterated with any substance or liquid injurious to health, he shall be punished by fine not less than fifty nor more than five hundred dollars.

Selling adulterated liquor.  
(Act Feb. 11, 1860, p. 98.)  
P.C. 426a.

Adulteration of medicine.  
P. C. 427.

ART. 395. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such manner as to change the operation of such drug or medicine, or render the same worthless, or injurious to health, he shall be punished by fine not less than fifty nor more than five hundred dollars.

### CHAPTER THREE.

#### UNLAWFUL PRACTICE OF MEDICINE.

	Article		Article
Practicing without certificate of qualification.....	396	Practicing without filing certificate for record.....	398
What constitutes separate offense.....	397	Not applicable, to what classes.....	399

Practicing without certificate of qualification.  
(Act Aug. 21, 1876, p. 231.)  
(Acts 1879, ch. 60, p. 67.)

ARTICLE 396. If any person shall practice for pay, or as a regular practitioner, medicine, in this state, in any of its branches or departments, or offer or attempt to practice without first having obtained a certificate of professional qualification from some authorized board of medical examiners, or without having a diploma from some accredited medical college, chartered by the legislature of the state or its authority, in which the same is situated, he shall be punished by fine not less than fifty nor more than five hundred dollars.

What constitutes separate offense.

ART. 397. Each patient visited or prescribed for, or each day's offer to practice, shall constitute a separate offense under the preceding article.

Practicing without filing certificate for record.  
(Act Aug. 21, 1876, p. 231.)  
(Acts 1879, ch. 60, p. 67.)

ART. 398. If any person shall hereafter engage in the practice of medicine in any of its branches or departments for pay, or as a regular practitioner, without having first filed for record with the clerk of the district court of the county in which such person may reside, or sojourn, a certificate from some authorized board of medical examiners, or a diploma from some accredited medical college, he shall be punished as prescribed in article 396.

Not applicable, to what classes.

ART. 399. The provisions of this chapter shall not apply to any person who has been regularly engaged in the general practice of medicine, in any of its branches or departments, in this state, for five consecutive years prior to January 1, 1875; nor to any person who may have legally qualified himself to practice medicine under the provisions of an act entitled "an act to regulate the practice of medicine," passed May 16, 1873; nor to any female who may follow the practice of midwifery strictly as such.

### CHAPTER FOUR.

#### VIOLATIONS OF QUARANTINE.

	Article		Article
Vessel landing from infected port, etc.....	400	Going ashore without permission.....	402
Passing station without permission.....	401	Landing goods without permission.....	403

Vessel landing from infected port, etc.  
(Act Aug. 13, 1870, p. 75.)

ARTICLE 400. After the legal establishment of any quarantine station on the coast of this state, if any vessel shall land or arrive at such station from an infected port, without a clean bill of health from the proper officer of said port, the master or commanding officer of such vessel shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than five hundred nor more than five thousand dollars.

Passing station without permission. 17b.

ART. 401. Any master or commanding officer of a vessel that passes or attempts to pass any quarantine station on the coast of this state during the continuance of the quarantine, without having first obtained permission

from the health officer of such station so to do, shall be punished by imprisonment in the penitentiary not less than two nor more than five years, or by fine not less than five hundred nor more than ten thousand dollars.

ART. 402. Any person belonging to or on board of a vessel placed under quarantine, who shall go ashore without the written permission of the health officer of the station, shall be fined not less than fifty nor more than five hundred dollars. Going ashore  
without per-  
mission. *Id.*

ART. 403. Any master or officer of a vessel placed under quarantine, who shall land, or permit to be landed from said vessel, any goods, wares, merchandise, or article whatsoever, while the same is under quarantine, without the written permission of the health officer of the quarantine station, shall be fined not less than fifty nor more than one thousand dollars for each article so landed. Landing goods  
without per-  
mission. *Id.*

TITLE XIII.

Of Offenses Affecting Property held in Common for the use of the Public.

CHAPTER ONE.

OBSTRUCTION OF NAVIGABLE STREAMS, ROADS, STREETS, AND BRIDGES.

	Article		Article
Obstruction of navigable streams.....	404	Commissioners' court and municipal authorities may also regulate.....	407
Of roads, streets, and bridges....	405		
Not applicable, when.....	406		

Obstruction of navigable streams.  
P.C. 428.

ARTICLE 404. If any person shall obstruct the navigation of any stream which can be navigated by steam, keel or flat-boats, by cutting and felling trees, or by building on or across the same any dyke, mill-dam, bridge or other obstruction, he shall be fined not less than fifty nor more than five hundred dollars.

Of roads, streets or bridges.  
(Act Feb. 11, 1860, p. 97.)  
P.C. 399d.

ART. 405. If any person shall willfully obstruct or injure, or cause to be obstructed or injured in any manner whatsoever, any public road or highway, or any street or alley in any incorporated town or city, or any public bridge or causeway, he shall be fined in a sum not exceeding five hundred dollars.

Not applicable, when. 70.

ART. 406. No person shall be punished under the preceding article who places obstructions in the streets or alleys of an incorporated city or town for purposes of building or improvement, under the sanction of the corporate authorities of such city or town.

Commissioners' court may also regulate.  
P.C. 430.

ART. 407. Nothing in this chapter contained shall be so construed as to prevent the commissioners' court of the several counties or the municipal authorities of towns or cities from adopting such regulations as they may deem proper relative to the removal of obstructions from public roads, streets or bridges, and to enforce the same by due process of law.

CHAPTER TWO.

OFFENSES PERTAINING TO PUBLIC ROADS AND IRRIGATION.

	Article		Article
Refusal to serve as overseer.....	408	Failure to open boundary lines.....	412
Failures of duty as overseer.....	409	Leaving gate open on third-class road.....	413
Same subject continued.....	410	Violation of irrigation laws.....	414
Failure to attend when summoned, etc.....	411		

Refusal to serve as overseer.  
(Act July 29, 1876, p. 67.)

ARTICLE 408. If any person subject to public road duty under the laws of this state, shall willfully fail or refuse to serve as overseer of any road in his road district or precinct, when duly appointed as such overseer by the commissioners' court of his county, he shall be fined not less than ten nor more than fifty dollars.

Failures of duty as overseer.  
Ib. p. 68.

ART. 409. If any overseer of a public road in this state shall willfully fail, neglect or refuse to perform any duty imposed upon him by law; or shall so fail, neglect or refuse to keep the road, bridges and causeways in his precinct or district clear of obstructions and in good order; or shall willfully suffer such road, bridges or causeways to remain uncleared and

out of repair for twenty days at any one time, he shall be fined not less than ten nor more than twenty-five dollars.

ART. 410. If any overseer of a public road in this state shall fail, within six months after his appointment as such, to measure the road or roads in his precinct or district and set up posts of lasting timber at the end of each mile leading from the court-house or some other noted place or town, and to mark on such posts, in legible words and figures, the distance in miles to said court-house or other noted place; or shall fail, when any such post is destroyed or removed, to replace the same with another marked as the original; or shall fail to affix or set up at the forks of all public roads in his district or precinct, index boards with directions pointing toward the most noted places to which they lead, he shall be fined in the sum of five dollars.

Same subject continued.  
*Ib.* p. 67.

ART. 411. If any person liable under the law to work upon the public roads shall willfully fail or refuse to attend, either in person or by substitute, at the time and place designated by the road overseer of his district or precinct, after being legally summoned; or shall fail, on or before the day for which he is summoned to attend, to pay to such overseer the sum of one dollar per day for each day he may have been notified to work on the road; or having attended, shall fail to perform any duty required of him by law and such overseer, he shall be fined in any sum not exceeding ten dollars.

Failure to attend when summoned, etc.  
*Ib.* p. 66.

ART. 412. Whenever the commissioners' court of any county in this state shall duly declare the boundary lines between the lands of different persons or owners a public highway, in accordance with law, if any such person or owner shall fail, neglect or refuse, for twelve months after legal notice thereof, to leave open his land, free from all obstructions, for ten feet on his side of the line so designated, he shall be fined not more than twenty dollars for each month after the twelve months aforesaid in which he may so fail, neglect or refuse.

Failure to open boundary lines  
*Ib.* p. 69.

(Act to adopt and establish P. C. and C. C. F., passed Feb. 21, 1879.)

ART. 413. If any person shall leave any gate open on or across any third-class road in this state, or on or across any road such as is designated in the preceding article, he shall be fined in the sum of ten dollars.

Leaving gate open on third-class road.  
*Ib.* p. 69.

ART. 414. If any person, amenable to the laws governing irrigation, shall fail or refuse to work on any ditch or aqueduct, when summoned so to do by the proper authority, he shall be fined not less than one nor more than five dollars.

Violation of irrigation laws.  
(Act Dec. 20, 1861, p. 8.)

## CHAPTER THREE.

### OFFENSES RELATING TO FERRIES.

Article		Article
Keeping ferry without license.....	415	Failure to keep good boats, etc.....
		416

ARTICLE 415. If any person or firm shall keep any ferry over any water course, navigable stream, lake or bay in this state, and shall charge or receive any money, property or other valuable thing for crossing passengers or property at such ferry, without first obtaining license, as is now or as may hereafter be required by law, such person or firm shall be punished by fine not less than fifty nor more than two hundred dollars.

Keeping ferry without license.  
(Act Feb. 11, 1860, p. 98.)  
P. C. 430a.

ART. 416. If the owner of any licensed ferry in this state shall fail to keep at all times good, safe and substantial boats, sufficient in number for the ready accommodation of the public; or shall fail to keep the banks on each side of the ferry in good repair, and so graded that the ascent shall not exceed one foot in every seven feet from the water's edge to the top of the bank; or shall fail to give ready attendance on all passengers desiring to cross with their animals, wagons or other property; or shall charge higher rates of ferriage than those fixed by the proper authority, he shall be fined not less than ten nor more than one hundred dollars.

Failure to keep good boats, etc.  
(Act March 4, 1875, pp. 58-9.)

CHAPTER FOUR.

OFFENSES RELATING TO PUBLIC GROUNDS AND BUILDINGS.

	Article		Article
Injuring or defacing a public building.....	417	Hitching animal in same.....	421
“Public building” defined.....	418	Taking property from public grounds.....	422
All officers to report violations.....	419	Failing to pay rent for public school lands.....	422—Note
Driving in capitol grounds without consent.....	420		

Injuring or defacing a public building. (Act Jan. 4, 1862, p. 51.)

“Public building” defined.

ARTICLE 417. If any person shall willfully injure or deface any public building in this state, he shall be fined not less than five nor more than five hundred dollars.

ART. 418. The term “public building,” as used in the preceding article, means the capitol and all other buildings in the capitol grounds at the seat of government, including the general land office and the executive mansion, the various state asylums and all buildings belonging to either; all college or university buildings erected by the state, all court-houses and jails, and all other buildings held for public use by any department or branch of government, state, county or municipal; and the specific enumeration of the above shall not exclude other buildings not named properly coming within the meaning and description of a public building.

All officers to report violations. (Act Jan. 4, 1862, p. 51.)

ART. 419. It is the especial duty of all executive officers of the state and the county officers of the various counties, to aid in the execution of the two preceding articles, and to report all violations thereof to the proper authorities for immediate prosecution.

Driving in capitol grounds, etc., without consent. (Act April 29, 1874, p. 165.)

ART. 420. If any person shall drive, ride or lead, or cause to be driven, ridden or lead, any horse or other animal into the capitol grounds at the seat of government, or into the inclosure of the state cemetery, without the consent of the keeper or superintendent of said grounds or cemetery, he shall be fined not exceeding twenty-five dollars.

Hitching in same. *Ib.*

ART. 421. If any person shall hitch any animal to any tree or shrub in the capitol grounds or state cemetery, he shall be punished as prescribed in the preceding article.

Taking property from public grounds, etc.

ART. 422. If any person shall take, remove, injure or destroy any species of public property pertaining to any public building, as defined in article 418, or to the grounds belonging to such building, he shall be fined not less than twenty-five nor more than one hundred dollars.

Failing to pay rent for public school lands.

NOTE.—Acts 1879, chapter 92, section 6: “Any person who shall control inclosed lands belonging to the public free schools, and fail to pay the rental value as specified under the provisions of this act upon the demand of the collector, shall be subject to prosecution upon complaint, information or indictment, and fined in the sum of one hundred dollars for each section so inclosed.”—L.

CHAPTER FIVE.

OFFENSES RELATING TO THE PROTECTION OF FISH, BIRDS AND GAME.

NOTE.—For the law to protect oysters and oyster beds, see chapter xxviii, acts 1879. See, also, appendix.—L.

	Article		Article
Trapping fish out of season.....	423	Killing prairie chickens in certain months...	427
Each day a separate offense.....	424	Killing quail or partridge in certain months.....	428
Taking fish by poison.....	425	Killing harmless birds.....	429
Failing to construct fish-ladders or fish-ways.....	425—Note	Certain fowls excepted.....	430
Killing female deer in certain months.....	426	Counties exempt from provisions of this act.....	430a

Trapping fish out of season. (Act April 6, 1874, p. 63.)

ARTICLE 423. If any person shall drag or haul any fish-net or seine, or set, place or use any fish-net, seine, trap or other contrivance of any character whatsoever, for the purpose of catching fish (except the ordinary

hook, line and pole) in any stream, lake or pool of water within this state above tide-water, between the fourteenth day of February and the fourteenth day of June of each year, he shall be fined not exceeding fifty dollars.

ART. 424. Each day that any net, seine, trap or other contrivance remains set or placed, shall constitute a separate offense under the preceding article. Each day a separate offense. 1b.

ART. 425. If any person shall catch or take, or attempt to catch or take any fish in this state by the use of any poisonous substance put into the water, he shall be fined not less than twenty-five nor more than one hundred dollars. Taking fish by poison.

NOTE.—Section 1, chapter xci. acts 1879, provides as follows:

SECTION 1. It shall be the duty of all persons, firms or corporations who have erected, or may hereafter erect, any mill-dam, water weirs or other obstructions on rivers or streams, \* \* \* within six months after the passage of this act, to construct and keep in repair, fish-ways or fish-ladders, \* \* \* so that at all seasons of the year, fish may ascend above such dam, weir or obstruction; any one failing to construct or keep in repair such fish-ways or fish-ladders, after having been notified and required by the fish commissioner to do so, shall be deemed guilty of a misdemeanor, and, upon conviction, be punished by fine not exceeding one hundred and not less than twenty-five dollars for every such neglect or refusal. Failing to construct fish-ladders or fish-ways.

All prosecutions under the act shall be upon complaint, under oath, before any justice, recorder or mayor of any city in the county where committed, or where the defendant may reside or be found, and must be commenced within two months from the time the offense was committed.—L.

ART. 426. If any person shall, by shooting or otherwise, knowingly kill any female deer in this state, in the months of March, April, May, June or July of any year, he shall be fined not less than five nor more than twenty dollars. Killing female deer in certain months.

ART. 427. If any person shall in any manner catch or kill any prairie chicken in this state, in the months of March, April, May or June of any year, he shall be punished as prescribed in the preceding article. Killing prairie chickens in certain months.

ART. 428. If any person shall in any manner catch or kill any quail or partridge in this state, in the months of March, April, May, June, July or August of any year, he shall be punished as prescribed in article 426. Killing quail or partridge in certain months.

ART. 429. If any person shall willfully kill, or in any manner injure any mocking-bird, whipporwill, night-hawk, blue bird, red bird, finch, thrush, linnet, wren, martin, swallow, bobolink, cat bird, nonpareil, scissor bird, sparrow or any buzzard or carrion crow, he shall be punished as prescribed in article 426. Killing harmless birds.

ART. 430. Aquatic fowls, wild turkeys and wild pigeons are not included within the provisions of the preceding article. Certain fowls excepted.

ART. 430a. That the following counties are hereby exempted from the provisions of articles 426, 427, 428 and 429 of this chapter, to wit: Sabine, San Augustine, Shelby, Titus, Franklin, Bosque, Hood, Somervell, Delta, Red River, Hunt, Rockwall, Henderson, Rains, Wood, Coryell, Hamilton, Brown, Coleman, Runnels, Johnson, Harrison, Cass, Cooke, Jasper, Newton, Orange, Morris, Rusk, Panola, Grayson, Denton, Leon, Marion, Fannin, Dallas, San Jacinto, Polk, Tyler, Wise, Montague, Clay, and the unorganized counties attached to the same for judicial purposes; Falls, Nacogdoches, Angelina, Hopkins, Parker, Jack, Young, and the unorganized counties attached to the same for judicial purposes; McLennan, Ellis, Robertson, Anderson, Bastrop, Tom Green, Hill, Lamar, Freestone, Cherokee, Bowie, Fort Bend, Wharton, Waller, Tarrant, Taylor, Callahan, Shackelford, Stephens, Eastland, Erath, Comanche, Palo Pinto, Smith, Gregg, Upshur, Camp, Limestone, Navarro, Grimes, Madison, Walker, Trinity, Burleson, Washington and Austin. Certain counties exempt. (Act to adopt and establish P. C. and C. of C. P., passed Feb. 21, 1879.)

TITLE XIV.

Of Offenses Against Trade, Commerce and the Current Coin.

CHAPTER ONE.

OF FORGERY AND OTHER OFFENSES AFFECTING WRITTEN INSTRUMENTS.

	Article	Article
"Forgery" defined.....	431	Persons not guilty, when..... 441
Alteration also forgery.....	432	Penalty for forgery..... 442
Intent to injure, etc., necessary.....	433	Passing forged instrument..... 443
"Instrument in writing" defined.....	434	Preparing implements for forgery..... 444
"Alter" defined.....	435	Possession, with intent to pass..... 445
"Another," includes what.....	436	Evidence, in cases of bank bills..... 446
"Pecuniary obligation" defined.....	437	Falsely reading written instrument..... 447
"Transferred or in any manner have affected" defined.....	438	Substituting one instrument for another.... 448
All participants guilty.....	439	Falsely personating another..... 449
Filling up over signature.....	440	Same, in acknowledgments .. 450

"Forgery" defined.  
P.C. 431.

ARTICLE 431. He is guilty of forgery who, without *lawful authority*, and with intent to *injure* or *defraud*, shall make a false *instrument in writing*, purporting to be the act of *another*, in such manner that the false instrument so made, would (if the same were true) have created, increased, diminished, discharged, or defeated any *pecuniary obligation*, or would have transferred, or in any manner have affected any *property* whatever.

Alteration also forgery.  
P.C. 432.

ART. 432. He is also guilty of forgery who, without lawful authority, and with intent to injure or defraud, shall *alter* an instrument in writing, then already in existence, by whomsoever made, in such manner that the alteration would (if it had been legally made) have created, increased, diminished, discharged, or defeated any pecuniary obligation, or would have transferred, or in any manner have affected any property whatever.

Intent to injure etc. necessary.  
P.C. 442.

ART. 433. The false making, or alteration, to constitute forgery, must be done with intent to injure or defraud, and the injury must be such as affects one pecuniarily or in relation to his property.

"Instrument in writing" defined.  
P.C. 434.

ART. 434. The words "instrument in writing," as used in articles 431 and 432, and elsewhere in this chapter, include every writing purporting to make known or declare the will or intention of the party whose act it purports to be, whether the same be of record, or under seal or private signature, or whatever other form it may have. It must be upon paper or parchment, or some substance made to resemble either of them. The words may be written, printed, stamped, or made in any other way, or by any other device. And the words "in writing," "write," "written," include all these modes of making. An instrument, partly printed or stamped, and partly written, is an instrument in writing. In order to come within the definition of forgery, the signature, when made otherwise than by writing, must be made to resemble manuscript.

"Alter" defined.  
P.C. 438.

ART. 435. The word "alter," in the definition of forgery, means to erase or obliterate any word, letter or figure, to extract the writing altogether, or to substitute other words, letters or figures for those erased, obliterated or extracted, to add any other word, letter or figure to the

original instrument; or to make any other change whatever, which shall have the effect to create, increase, diminish, discharge or defeat a pecuniary obligation, or to transfer, or in any other way affect any property whatever.

ART. 436. The instrument must purport to be the act of "another," and within the meaning of this word, as used in defining forgery, are included this state, the United States, or either of the states or territories of the Union; all the several branches of the government of either of them; all public and private bodies, politic and corporate; all courts; all officers, public or private, in their official capacity; all partnerships in professions or trades; and all other persons, whether real or fictitious, except the person engaged in the forgery.

"Another" in  
cludes what.  
P.C. 439.

ART. 437. "Pecuniary obligation" means every instrument having money for its object, and every obligation for the breach of which a civil action for damages may be lawfully brought.

"Pecuniary ob-  
ligation" de-  
fined.  
P.C. 440.

ART. 438. By an instrument, which would "have transferred, or in any manner have affected" property, is meant every species of conveyance, or undertaking in writing, which supposes a right in the person purporting to execute it, to dispose of, or change the character of property of every kind, and which can have such effect when genuine.

"Transferred  
or in any man-  
ner have affect-  
ed" defined.  
P.C. 441.

ART. 439. He is guilty of making or altering, as the case may be, under articles 431 and 432, who, knowing the illegal purpose intended, shall write, or cause to be written, the signature, or the whole or any part of the forged instrument. All persons engaged in the illegal act are deemed guilty of forgery.

All partici-  
pants guilty.  
P.C. 435.

ART. 440. It is forgery to make, with intent to defraud or injure, a written instrument, by filling up over a genuine signature, or by writing on the opposite side of a paper so as to make the signature appear as an indorsement.

Filling up over  
signature.  
P.C. 436.

ART. 441. When the person making, or altering an instrument in writing, acts under an authority which he has good reason to believe, and actually does believe, to be sufficient, he is not guilty of forgery, though the authority be in fact insufficient or void.

Person not  
guilty, when.  
P.C. 437.

ART. 442. If any person be guilty of forgery, he shall be punished by confinement in the penitentiary not less than two nor more than seven years.

Penalty.  
P.C. 433.

ART. 443. If any person shall knowingly pass as true, or attempt to pass as true, any such forged instrument in writing, as is mentioned and defined in the preceding articles of this chapter, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Passing forged  
instrument.  
P.C. 443.

ART. 444. Whoever shall prepare, in this state, any implements or materials, or engrave any plate for the purpose of being used in forging the notes of any bank, whether within this state or out of it, and whether the same be incorporated or not; or who shall have in his possession, in this state, any such implements, materials or engraved plate, with intent to be used for the purpose above mentioned, shall be imprisoned in the penitentiary not less than two nor more than five years.

Preparing im-  
plements for  
forgery.  
P.C. 444.

ART. 445. If any person shall knowingly have in his possession any instrument of writing, the making of which is by law an offense, with intent to use or pass the same as true, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Possession of  
forged instru-  
ment with in-  
tent to pass.  
(Act Feb. 12,  
1858, p. 169.)  
P.C. 445.

ART. 446. Upon the trial of any indictment for the forgery of any bank bill, or for passing, or attempting to pass, any such bill as true, or for knowingly having in possession any such forged bank bill, evidence that bills or notes, purporting to be issued by any bank, are commonly received as currency, or proof of the existence of such bank by parol tes-

Evidence in  
cases of bank  
bills.  
P.C. 446.

timony, shall be deemed sufficient to show its legal establishment and existence.

Falsely reading instrument.  
P.C. 447.

ART. 447. If any one with intent to defraud shall, either by falsely reading or falsely interpreting any pecuniary obligation or instrument in writing which would in any manner affect property, or by misrepresenting its contents, induce any one to sign such instrument as his act, or give assent to it in such manner as would make it his act, if not done under mistake, the person so offending shall be imprisoned in the penitentiary not less than two nor more than five years.

Substituting one instrument for another.  
P.C. 448.

ART. 448. If any person, with intent to defraud, shall substitute one instrument of writing for another, and by this means induce any person to sign an instrument materially different from that which he intended to sign, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Falsely personating another.  
P.C. 449.

ART. 449. If any one shall falsely personate another, whether bearing the same name or not, and, in such assumed character, shall give authority to any person to sign such assumed name to any instrument of writing which, if genuine, would create, increase, diminish or discharge any pecuniary obligation, or would transfer or in any way affect any property, he shall be imprisoned in the penitentiary not less than two nor more than seven years.

Same in acknowledgments.  
P.C. 450.

ART. 450. If any person shall falsely personate another, whether bearing the same name or not, and in such assumed character shall, before any officer authorized by law to authenticate instruments of writing for registration, acknowledge the execution of any instrument of writing purporting to convey or in any manner affect an interest in property, such instrument purporting to be the act of the person whose name is so assumed, and the acknowledgment thereof being such as would entitle the instrument to be registered, he shall be punished by confinement in the penitentiary not less than two nor more than ten years.

## CHAPTER TWO.

### FORGERY OF LAND TITLES, Etc.

	Article	Article	
Forgery of patents, etc., defined.....	451	Proof and allegations necessary in indictment.....	455
False certificate by officers, forgery.....	452	Proof of intent to defraud United States, etc., no variance.....	455
Knowingly uttering forged instruments.....	453	Further as to venue.....	456
Venue.....	454	Rules in forgery applicable.....	457
Non residents may commit.....	454		

"Forgery of patents, etc.," defined

(Act to adopt and establish P. C. and C. of C. F., passed Feb. 21 1873.)

ARTICLE 451. Every person who falsely makes, alters, forges or counterfeits, or causes or procures to be falsely made, altered, forged or counterfeited, or in any way aids, assists, advises or encourages the false making, altering, forging or counterfeiting any certificate, field-notes, returns, survey, map, plat, report, order, decree, record, patent, deed, power of attorney, transfer, assignment, release, conveyance or title paper, or acknowledgment, or proof for record, or certificate of record belonging or pertaining to any instrument or paper, or any seal official or private, stamp, scroll, mark, date, signature, or any paper, or any evidence of any right, title or claim of any character, or any instrument in writing, document, paper or memorandum, or file of any character whatsoever in relation to or affecting lands, or any interest in lands in this state, with the intent to make money or other valuable thing thereby, or with intent to set up a claim or title, or aid or assist any one else in setting up a claim or title to lands or any interest in lands, or to prosecute or defend a suit, or aid or assist any one else in prosecuting or defending a suit with respect to lands, or to cast a cloud upon the title, or in any way injure, obtain the advantage

of, or prejudice the rights or interests of the true owners of lands, or with any fraudulent intent whatever, shall be deemed guilty of forgery and be punished by imprisonment in the state penitentiary at hard labor not less than five nor more than twenty years.

ART. 452. If any person authorized by law to take the proof or acknowledgment of any instrument, document or paper whatsoever, affecting or relating to the title to lands in this state, willfully and falsely certify that such proof or acknowledgment was duly made; or if any person fraudulently affixes a fictitious or pretended signature purporting to be that of an officer or any other person, though such person never was an officer or never existed, he shall be deemed guilty of forgery and punished as provided in article 451 of this chapter.

False certificate by officers, forgery. *Id.*

ART. 453. Every person who knowingly utters, publishes, passes or uses, or who in any way aids, assists in, or advises the uttering, publishing, passing or using, as true and genuine, any false, forged, altered or counterfeited certificate, field-notes, returns, survey, map, plat, report, order, decree, record, patent, deed, power of attorney, transfer, assignment, release, conveyance, title papers, acknowledgment or proof for record, or certificate of record belonging or pertaining to any instrument or paper, or any evidence of any right, title or claim of any character whatsoever, or any instrument in writing, document, paper, memorandum or file, or any official or private seal, or any scroll, mark, date or signature in any way relating to or having any connection with land, or any interest in land in this state, with the intent mentioned in article 451 of this chapter, or with any other fraudulent intent whatsoever, shall be deemed guilty and be punished in like manner as is provided in article 451 of this chapter. And the filing, or causing or directing to be filed, or causing or directing to be recorded in the general land office of the state, or in any office of record or in any court in this state, or the sending through the mails or by express, or in any other way, for the purpose of filing or record of any such false, altered, forged or counterfeited matter, documents, conveyances, papers or things, knowing the same to be false, altered, forged or counterfeited, shall be an uttering, publishing and using within the meaning of this article.

Knowingly uttering forged instruments. *Id.*

ART. 454. Persons out of the state may commit, and be liable to indictment and conviction for committing, any of the offenses enumerated in this chapter, which do not in their commission necessarily require a personal presence in this state—the object of this chapter being to reach and punish all persons offending against its provisions, whether within or without the state; and indictments, under this chapter, may be presented by the grand jury of Travis county, in this state, or in the county where the offense was committed, or in the county where the land lies, about which the offenses named in this chapter were committed.

Non-residents may commit.

Venue. *Id.*

ART. 455. Upon indictment, under this chapter, to warrant a conviction, it shall only be necessary to prove that the person charged took any one step, or did any one act or thing in the commission of the offense, if from such step, act or thing, any of the intentions hereinbefore mentioned, or any other fraudulent intention, may be reasonably inferred; nor shall it be any defense to a prosecution, under this chapter, that the matter, act, deed, instrument or thing was in law, either as to substance or form, void, or that the same was not in fact used for the purpose for which it was made or designed; and it shall only be necessary, in any indictment under this chapter, to state with reasonable certainty the act constituting the offense, and charge, in connection therewith, in general terms, the intention to defraud, without naming the person or persons it was intended to defraud; and, on trial of such indictment, it shall be sufficient and shall not be deemed a variance if there appears to be an intent to defraud the United States, or any state, territory, county, city, town or village, or any

Proof and allegations necessary in indictment. *Id.*

Proof of intent to defraud, U. S. etc., no variance. *Id.*

body corporate, or any public officer in his official capacity, or any copartnership, or member thereof, or any particular person.

**Venne.** *Id.* ART. 456. Indictments under this chapter may be presented and the offenses prosecuted in any of the counties prescribed in this chapter or the Code of Criminal Procedure.

**Rules in for-**  
**gery appli-**  
**cable.** *Id.* ART. 457. The rules prescribed in chapter 1 of this title, relative to the offense of forgery, so far as the same are applicable, shall apply to the various offenses enumerated in this chapter.

**NOTE.**—This chapter, as submitted by the Revisers, consisted of eight articles. The legislature struck it out and inserted one of seven and article 458 disappeared.—L.

### CHAPTER THREE.

#### OF COUNTERFEITING AND DIMINISHING THE VALUE OF CURRENT COIN.

	Article		Article
"Counterfeiting" defined.....	459	Making dies, etc., and having them in pos-	
"Altering" also counterfeiting.....	460	session.....	464
Resemblance need not be perfect.....	461	Passing coin of diminished value.....	465
Punishment.....	462	"Gold and silver coin" defined.....	466
Passing counterfeit coin.....	463	What sufficient to constitute passing.....	467

**"Counterfeit-**  
**ing" defined.**  
P.C. 451. ART. 459. He is guilty of counterfeiting who makes, in the semblance of true gold or silver coin, any coin of whatever denomination, having in its composition a less proportion of the precious metal of which the true coin intended to be imitated is composed, than is contained in such true coin, with intent that the same should be passed in this state or elsewhere.

**"Altering" also**  
**counterfeiting.**  
P.C. 452. ART. 460. He is also guilty of counterfeiting who, with like intent, alters any coin of lower value so as to make it resemble coin of higher value.

**Resemblance**  
**need not be**  
**perfect.**  
P.C. 453. ART. 461. The resemblance between the true and the false coin need not be perfect to constitute the offense of counterfeiting.

**Punishment.**  
P.C. 454. ART. 462. Any person who shall counterfeit any gold or silver coin shall be punished by imprisonment in the penitentiary not less than five nor more than ten years.

**Passing coun-**  
**terfeit coin.**  
P.C. 455. ART. 463. If any person, with intent to defraud, shall pass, or offer to pass, as true, or bring into this state, or have in his possession, with intent to pass as true, any counterfeit coin, knowing the same to be counterfeit, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

**Making dies,**  
**etc., and having**  
**them in posses-**  
**sion.**  
P.C. 456. ART. 464. If any person, with the intention of committing the offense of counterfeiting, or of aiding therein, shall make or repair, or shall have in his possession any die, mould or other instrument whatever, designed or adapted, or usually employed for making coin, or shall prepare, or have in his possession, any base metal prepared for coinage, with intent that the same may be used for the purpose of counterfeiting, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

**Passing coin of**  
**diminished**  
**value.**  
(Act Feb. 12,  
1858, p. 169.)  
P.C. 457. ART. 465. If any person shall, with intent to profit thereby, diminish the weight of any gold or silver coin, and shall afterward pass it for the value it would have had before it was so diminished, or send it to any place, whether in the state or out of it, with the intent that the same may be passed, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

**"Gold and sil-**  
**ver coin" de-**  
**finied.**  
P.C. 458. ART. 466. By the gold or silver coin mentioned in this chapter, is meant any piece of gold or silver of which one of those metals is the principal

component part, and which passes as money in the United States, either by law or usage, whether the same be of the coinage of the United States or of any foreign country.

ART. 467. It is sufficient to constitute the offense of passing, or attempting to pass, under the provisions of this chapter, if the counterfeit coin be delivered or offered to another, with the intention of defrauding, or enabling such other person to defraud, although such counterfeit coin be not delivered or offered at the full value which it would bear if genuine.

What sufficient  
to constitute  
passing.  
P.C. 459.

## CHAPTER FOUR.

### OF OFFENSES WHICH AFFECT FOREIGN COMMERCE.

Article	Article
Shipping articles without inspection..... 468	Same subject..... 471
Altering marks, etc..... 469	Fraudulent insurance..... 472
False packing..... 470	Harboring deserting seamen..... 473

ARTICLE 468. If any person shall export from this state, or ship, for the purpose of exportation to any one of the United States, or to any foreign port, any article of commerce, which, by any law of the state, may be required to be inspected by a public inspector, without having caused such inspection to be made according to law, he shall be fined not exceeding one hundred dollars.

Shipping ar-  
ticles without  
inspection.  
P.C. 460.

ART. 469. If any person shall counterfeit, or alter the mark, brand or stamp, directed by any law of the state to be put on any article of commerce, or on the box, cask or package containing the same, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding one year.

Altering  
marks, etc.  
P.C. 461.

ART. 470. If any person shall, with intent to defraud, put into any hogshead, barrel, cask or keg, or into any bale, box or package, containing merchandise or other commodity usually sold by weight, any article whatever of less value than the merchandise with which such bale, box, package, hogshead, barrel, cask or keg is apparently filled, or, with intent to defraud, shall sell or barter, give in payment, or expose to sale, or ship for exportation, any such hogshead, barrel, cask, keg, box, bale or package of merchandise, or other commodity, with any such article of inferior value concealed therein, he shall be punished by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

False packing.  
P.C. 462.

ART. 471. If any person shall, with intent to deceive and defraud, conceal within any hogshead, cask, barrel, box, bale, keg or package, containing merchandise or other commodity, any merchandise or commodity of a quality inferior to that which such hogshead, cask, barrel, bale, keg or package is apparently filled, or any substance of less value, he shall be fined not exceeding five hundred dollars.

Same subject.  
(Act Feb. 12,  
1858, p. 170.)  
P.C. 463.

ART. 472. If any person shall cause insurance to be made in this state on any merchandise or other commodity represented to be already shipped, or about to be shipped, at any place, whether within this state or out of it, and shall, with intent to defraud the insurer, ship articles of value less than one-half the represented value of those insured, or of a different kind from those insured, he shall be punished by fine in any sum not exceeding the amount for which such merchandise or commodity may be insured.

Fraudulent in-  
surance.  
P.C. 464.

ART. 473. The municipal authorities of incorporated towns and cities being shipping ports, may make such regulations as are deemed proper for the punishment of keepers of boarding houses and others, who know-

Harboring de-  
serting seamen  
P.C. 465.

ingly lodge, entertain or conceal seamen who have deserted from any merchant vessel in their respective ports; but they shall not affix a higher penalty for such offense than a fine of fifty dollars, or imprisonment in jail for thirty days.

CHAPTER FIVE.

FALSE WEIGHTS AND MEASURES.

	Article		Article
Penalty for using.....	474	Destruction of, on conviction.....	476
Definition of. ....	475		

Penalty for using.  
P.C. 466.

ARTICLE 474. If any person shall use a false balance, weight or measure, in weighing or measuring anything whatever, purchased or sold by himself, or bartered, shipped or delivered by him for sale, or bartered, or pledged, or given in payment, knowing the same to be false, and with intent to defraud, he shall be punished by fine not exceeding three hundred dollars.

Definition of.  
P.C. 467.

ART. 475. A false weight or measure is such as is not in conformity with the standard which is or may be established by a law of this state.

Destruction of, on conviction.  
P.C. 468.

ART. 476. When a warrant of arrest is issued in case of offenses under this chapter, the magistrate shall direct the false balances, weights or measures to be seized and kept by the sheriff until the trial of the defendant, and, in case of conviction, the same shall be destroyed.

CHAPTER SIX.

OF OFFENSES BY PUBLIC WEIGHERS.

	Article		Article
Use of false balance by.....	477	Persons, other than public weighers, weighing parcels.....	478—Note
Giving false certificate.....	478		

Use of false balance by.  
P.C. 469.

ARTICLE 477. If any person, appointed public weigher by authority of any law of this state, shall fraudulently use any false balance or instrument for weighing, or shall, in the exercise of his official duties, fraudulently give the wrong weight of any article weighed by him, he shall be punished by fine not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail not exceeding one year.

Giving false certificate.  
(Act March 15, 1875, p. 164.)

ART. 478. If any public weigher in this state, or his deputy, shall willfully certify to any false weight of cotton, sugar, wool or hides, he shall be punished by confinement in the penitentiary not less than two nor more than three years.

Persons other than public weighers weighing parcels.

NOTE.—Section 7, chapter 108, acts 1879, makes it unlawful for any person other than a public weigher, or his deputy, to weigh any article required to be weighed, sold or offered for sale in any city having a public weigher; any person violating the section shall be deemed guilty of a misdemeanor, and shall suffer a fine of five dollars for each parcel so weighed.

Section 10 of this act, however, provides that nothing contained in the act shall be construed to prevent any person from weighing his own cotton, wool, hides or sugar, in person, without being compelled to call upon a public weigher to weigh the same; and,

Section 8 provides that any owner shipping any produce named in the act, to any town or city having a public weigher, may, by written instructions, authorize his factor, commission merchant or agent to have such produce weighed by private weighers, if he prefer to so do, and the prohibitions and penalties of the act are not in such cases to apply. (See appendix.)—L.

CHAPTER SEVEN.

MISCELLANEOUS OFFENSES.

	Article		Article
False certificate by notary public.....	479	Throwing ballast into sea near bar or har-	
False declaration or protest by same.....	480	bor.....	482—Note
Preceding articles, embrace what.....	481	False entry in book of account.....	483
False declaration by master of vessel.....	482		

ARTICLE 479. If any notary public shall make any false certificate as to the proof or acknowledgment of any instrument of writing relating to commerce or navigation, to which, by law, he is authorized to certify; or shall make any false certificate as to the proof or acknowledgment of any letter of attorney, or other instrument of writing relating to commerce or navigation, to which he may by law certify, he shall be punished by confinement in the penitentiary not less than two nor more than five years. False certifi-  
cate by notary  
public.  
P.C. 470.

ART. 480. If any notary public shall make any false declaration or protest respecting any matter or thing relating to commerce or navigation, or to commercial instruments where, by law, he is authorized to make such declaration or protest, he shall be punished as prescribed in the preceding article. False declara-  
tion or protest  
by.  
P.C. 471.

ART. 481. The provisions of the two preceding articles are intended to embrace all acts of a notary public done in his official capacity within the proper sphere of his duties, and which arise out of transactions respecting navigation or commerce. Preceding ar-  
ticles embrace  
what.  
P.C. 472.

ART. 482. If any master or other officer of a vessel, with intent to defraud, shall make a false declaration or protest as to the loss or damage of any vessel or cargo, he shall be punished by confinement in the penitentiary not less than two nor more than five years. False declara-  
tion by master  
of vessel.  
P.C. 473.

NOTE.—Chapter 142, acts 1879, provides: That if any ballast shall be thrown into the sea, within six miles of any bar or harbor in this state, from any vessel, the master or other officer in charge thereof at the time shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than two hundred dollars.—L. Throwing bal-  
last into sea  
near bar or  
harbor.

ART. 483. If any person, with intent to defraud, shall make, or cause to be made, any false entry in any book kept as a book of accounts; or shall, with like intent, alter or cause to be altered any item of an account kept or entered in such book, he shall be fined not less than one hundred nor more than one thousand dollars, or be punished by confinement in the penitentiary not less than two nor more than five years. False entry in  
book of ac-  
count.  
(Act Feb. 12,  
1858, p. 170.)  
P.C. 474.

TITLE XV.

Of Offenses Against the Person.

CHAPTER ONE.

ASSAULT AND ASSAULT AND BATTERY.

	Article		Article
"Assault and battery" defined.....	484	When violence does not amount to.....	490
Intent presumed and "injury" defined.....	485	Degree of force permissible.....	491
May be committed on person not intended..	486	Verbal provocation no justification.....	492
How it may be committed.....	487	"Battery," how used.....	493
Any means capable of injury sufficient.....	488	Degrees of assault.....	494
"Coupled with an ability to commit" defined	489	Punishment for simple assault, etc.....	495

"Assault and battery" defined.  
P.C. 475.

ARTICLE 484. The use of any unlawful violence upon the person of another, with intent to injure him, whatever be the means or the degree of violence used, is an assault and battery. Any attempt to commit a battery, or any threatening gesture showing in itself or by words accompanying it, an immediate intention, coupled with an ability to commit a battery, is an assault.

Intent presumed and "injury" defined.  
P.C. 476.

ART. 485. When an injury is caused, by violence to the person, the intent to injure is presumed, and it rests with the person inflicting the injury to show the accident or innocent intention. The injury intended may be either bodily pain, constraint, a sense of shame or other disagreeable emotion of the mind.

May be committed on person not intended.  
P.C. 477.

ART. 486. An assault, or an assault and battery, may be committed, though the person actually injured thereby was not the person intended to be injured.

How it may be committed.  
P.C. 478.

ART. 487. An assault, or assault and battery, may be committed by the use of any part of the body of the person committing the offense, as of the hand, foot, head, or by the use of any inanimate object, as a stick, knife, or anything else capable of inflicting the slightest injury, or by the use of any animate object, as by throwing one person against another, or driving a horse or other animal against the person.

Any means capable of injury sufficient.  
P.C. 479.

ART. 488. Any means used by the person assaulting, as by spitting in the face, or otherwise, which is capable of inflicting an injury, comes within the definition of an assault, or an assault and battery, as the case may be.

"Coupled with an ability to commit" defined.  
P.C. 482.

ART. 489. By the terms "coupled with an ability to commit," as used in article 484, is meant—

1. That the person making the assault must be in such a position that, if not prevented, he may inflict a battery upon the person assailed.

2. That he must be within such distance of the person so assailed as to make it within his power to commit the battery by the use of the means with which he attempts it.

3. It follows, that one who is, at the time of making an attempt to commit a battery, under such restraint as to deprive him of the power to act, or who is at so great a distance from the person assailed as that he can not reach his person by the use of the means with which he makes the attempt, is not guilty of an assault. But the use of any dangerous weapon, or the semblance thereof, in an angry or threatening manner, with intent

to alarm another, and under circumstances calculated to effect that object, comes within the meaning of an assault.

ART. 490. Violence used to the person does not amount to an assault or battery in the following cases:

When violence does not amount to. P.C. 483.

1. In the exercise of the right of moderate restraint or correction given by law to the parent over the child, the guardian over the ward, the master over his apprentice, the teacher over the scholar.

2. For the preservation of order in a meeting for religious, political or other lawful purposes.

3. The preservation of the peace, or to prevent the commission of offenses.

4. In preventing or interrupting an intrusion upon the lawful possession of property.

5. In making a lawful arrest and detaining the party arrested, in obedience to the lawful order of a magistrate or court, and in overcoming resistance to such lawful order.

6. In self-defense, or the defense of another, against unlawful violence offered to his person or property.

ART. 491. In all the cases mentioned in the preceding article, where violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose.

Degree of force permissible. P.C. 484.

ART. 492. No verbal provocation justifies an assault and battery, but insulting and abusive words may be given in evidence in mitigation of the punishment affixed to the offense.

Verbal provocation no justification. P.C. 485.

ART. 493. The word battery is used in this Code in the same sense as "*assault and battery*."

"Battery," how used. P.C. 486.

ART. 494. An assault is either a simple assault, an aggravated assault, or an assault with intent to commit some other offense.

Degrees of assault. P.C. 480.

ART. 495. The punishment for a simple assault, or for assault and battery, unattended with circumstances of aggravation, shall be a fine not less than five nor more than twenty-five dollars.

Punishment for simple assault, etc. P.C. 487. (Act to adopt and establish P. C. and C. of C. P., passed Feb. 21, 1879;)

## CHAPTER TWO.

### AGGRAVATED ASSAULT AND BATTERY.

Definition of "aggravated assault and battery".....	Article 496	Aggravation may be of different degrees....	Article 497
		Punishment.....	498

ARTICLE 496. An assault or battery becomes aggravated when committed under any of the following circumstances:

Definition. (Act Nov. 6, 1871, p. 20.) P.C. 488.

1. When committed upon an officer in the lawful discharge of the duties of his office, if it was known or declared to the offender that the person assaulted was an officer discharging an official duty.

2. When committed in a court of justice, or in any place of religious worship, or in any place where persons are assembled for the purpose of innocent amusement.

3. When the person committing the offense goes into the house of a private family and is there guilty of an assault and battery.

4. When committed by a person of robust health or strength upon one who is aged or decrepit.

5. When committed by an adult male upon the person of a female or child, or by an adult female upon the person of a child.

6. When the instrument or means used is such as inflicts disgrace upon the person assaulted, as an assault or battery with a whip or cowhide.

7. When a serious bodily injury is inflicted upon the person assaulted.

8. When committed with deadly weapons under circumstances not amounting to an intent to murder or maim.

9. When committed with premeditated design, and by the use of means calculated to inflict great bodily injury.

10. When committed by any person or persons in disguise.

Aggravation may be of different degrees. P.C. 489.

Punishment. P.C. 491. (Act to adopt and establish P. C. and C. of C. P., passed Feb. 21, 1879.)

ART. 497. The circumstances of aggravation mentioned in the preceding article are of different degrees, and the jury are to consider these circumstances in forming their verdict and assessing the punishment.

ART. 498. The punishment for an aggravated assault or battery shall be fine not less than twenty-five nor more than one thousand dollars, or imprisonment in the county jail not less than one month nor more than two years, or by both such fine and imprisonment.

### CHAPTER THREE.

#### OF ASSAULTS WITH INTENT TO COMMIT SOME OTHER OFFENSE.

	Article		Article
Assault with intent to maim.....	499	With intent to rape.....	503
With intent to murder.....	500	With intent to rob.....	504
"Bowie-knife" and "dagger" defined.....	501	In an attempt at burglary.....	505
Test on trial.....	502	Ingredients of the offense.....	506

Assault with intent to maim. (Act Nov. 6, 1871, p. 20.) P.C. 492.

ARTICLE 499. If any person shall assault another with intent to commit the offense of maiming, disfiguring or castration, he shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the penitentiary not less than two nor more than five years; and if such assault be made by a person or persons in disguise, the penalty shall be doubled.

With intent to murder. (Act Nov. 6, 1871, p. 20.) P.C. 493.

ART. 500. If any person shall assault another with intent to murder, he shall be punished by confinement in the penitentiary not less than two nor more than seven years; if the assault be made with a bowie-knife or dagger, or in disguise, the punishment shall be doubled.

"Bowie-knife" and "dagger" defined. P.C. 611.

ART. 501. A "bowie-knife" or "dagger," as the terms are here and elsewhere used, means any knife intended to be worn upon the person, which is capable of inflicting death and not commonly known as a pocket-knife.

Test on trial. P.C. 497.

ART. 502. Whenever it appears upon a trial for assault with intent to murder that the offense would have been murder had death resulted therefrom, the person committing such assault is deemed to have done the same with that intent.

With intent to rape. P.C. 494.

ART. 503. If any person shall assault a woman with intent to commit the offense of rape, he shall be punished by confinement in the penitentiary not less than two nor more than seven years.

With intent to rob. (Act Feb. 12, 1858, p. 171.) P.C. 495.

ART. 504. If any person shall assault another with intent to commit the offense of robbery, he shall be punished by confinement in the penitentiary not less than two nor more than ten years.

In an attempt at burglary. (Act Feb. 12, 1858, p. 171.) P.C. 496.

ART. 505. If any person in attempting to commit burglary shall assault another, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Ingredients of the offense. P.C. 499.

ART. 506. An assault with intent to commit any other offense is constituted by the existence of the facts which bring the offense within the definition of an assault, coupled with an intention to commit such other offense, as of maiming, murder, rape or robbery.

CHAPTER FOUR.

OF MAIMING, DISFIGURING AND CASTRATION.

	Article		Article
"Maiming" defined.....	507	Punishment.....	510
Punishment.....	508	"Castration" defined.....	511
"Disfiguring" defined.....	509	Punishment.....	512

I. MAIMING.

ARTICLE 507. To maim is to willfully and maliciously cut off or otherwise deprive a person of the hand, arm, finger, toe, foot, leg, nose or ear; to put out an eye, or in any way to deprive the person of any other member of his body. "Maiming" defined. P.C. 500.

ART. 508. If any person shall commit the offense of maiming, he shall be punished by confinement in the penitentiary not less than two nor more than ten years. Punishment. P.C. 503.

II. DISFIGURING.

ART. 509. To disfigure is to willfully and maliciously place any mark by means of a knife or other instrument upon the face or other part of the person. "Disfiguring" defined. P.C. 501.

ART. 510. If any person shall disfigure another, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars. Punishment. (Act Feb. 12, 1858, p. 171.) P.C. 504.

III. CASTRATION.

ART. 511. To castrate is to willfully and maliciously deprive any person of either, or both, or any part of either or both of the testicles. "Castration" defined. Punishment. P.C. 505.

ART. 512. If any person shall commit the offense of castration, he shall be punished by confinement in the penitentiary not less than five nor more than fifteen years.

CHAPTER FIVE.

FALSE IMPRISONMENT.

	Article		Article
"False imprisonment" defined.....	513	What detention is not.....	517
Assault or violence same as in assault and battery.....	514	Punishment.....	518
What impediment is necessary.....	515	Detention after discharge on <i>habeas corpus</i> ..	519
Threats, effect of.....	516	Refusal to allow consultation with counsel..	520

ARTICLE 513. False imprisonment is the willful detention of another against his consent, and where it is not expressly authorized by law, whether such detention be effected by an assault, by actual violence to the person, by threats or by any other means which restrains the party so detained from removing from one place to another as he may see proper. "False imprisonment" defined. P.C. 508.

ART. 514. The assault or violence may be such as is spoken of in defining the offense of assault and battery. Assault or violence same as in assault and battery. P.C. 509.

ART. 515. The impediment must be such as is in its nature calculated to detain the person, and from which he can not by ordinary means relieve himself. What impediment necessary. P.C. 510.

ART. 516. The threat must be such as is calculated to operate upon the person threatened, and inspire a just fear of some injury to his person, reputation or property, or to the person, reputation or property of another; and the jury are to consider the age, sex, condition, disposition or health of the person threatened, in determining whether the threat was sufficient to intimidate and prevent such person from moving beyond the bounds in which he was detained. Threat, effect of. P.C. 511.

What detention is not.  
P.C. 512.

ART. 517. It is not an offense to detain a person in the cases and for the objects mentioned in article 490, as justifying the use of force, but whenever it is assumed as a justification that such circumstances existed, it must be shown also that the detention was necessary to effect any of the objects set forth in said article.

Punishment.  
P.C. 513.

ART. 518. Any person who shall be guilty of the offense of false imprisonment shall be fined not exceeding five hundred dollars, and may be confined in the county jail not exceeding one year.

Detention after discharge on *habeas corpus*.  
P.C. 514.

ART. 519. If any officer or other person shall hold or detain in any manner any one who has been ordered to be discharged by any court or judge, upon the hearing of a writ of *habeas corpus*, he shall suffer double the punishment prescribed in the preceding article.

Refusal to allow consultation with counsel.  
(Act Nov. 15, 1864, p. 15.)

ART. 520. If any officer, or other person having the custody of a prisoner in this state, shall willfully prevent such prisoner from consulting or communicating with counsel, or from obtaining the advice or services of counsel in the protection or prosecution of its legal rights, he shall be punished by imprisonment in the county jail not less than sixty days nor more than six months, and by fine not exceeding one thousand dollars.

## CHAPTER SIX.

### OF KIDNAPPING AND ABDUCTION.

	Article	Article
"Kidnapping" defined.....	521	Of female under fourteen..... 525
Punishment.....	522	Offense complete, when..... 526
If person kidnapped be actually removed....	523	Punishment..... 527
"Abduction" defined.....	524	

"Kidnapping" defined.  
(Act Feb. 12, 1858, pp. 171-2.)  
P.C. 515.

ARTICLE 521. When any person is falsely imprisoned for the purpose of being removed from the state, or if a minor under the age of seventeen years, for the purpose of being concealed or taken from the lawful possession of a parent or guardian, such false imprisonment is "kidnapping." If the person kidnapped be under the age of fifteen years, it is not necessary that there should be force in order to constitute the offense of kidnapping.

Punishment.  
P.C. 516.

ART. 522. The punishment for kidnapping shall be imprisonment in the penitentiary not less than two nor more than five years, or fine not exceeding two thousand dollars.

If person kidnapped be actually removed.  
P.C. 517.

ART. 523. If the person so falsely imprisoned be actually removed out of the state, the punishment shall be imprisonment in the penitentiary not less than two nor more than ten years.

#### II. ABDUCTION.

"Abduction" defined.  
P.C. 518.

ART. 524. "Abduction" is the false imprisonment of a woman, with intent to force her into a marriage, or for the purpose of prostitution.

Of female under fourteen.  
P.C. 519.

ART. 525. If a female under the age of fourteen be taken, for the purpose of marriage or prostitution, from her parent, guardian or other person having the legal charge of her, it is abduction, whether she consent or not, and although a marriage afterward take place between the parties.

Offense complete, when.  
P.C. 520.

ART. 526. The offense of abduction is complete if the female be detained as long as twelve hours, though she may afterward be relieved from such detention without marriage or prostitution.

Punishment.  
(Act Feb. 12, 1858, p. 172.)  
P.C. 521.

ART. 527. Any person who shall be guilty of abduction shall be punished by fine not exceeding two thousand dollars. If by reason of such abduction a woman be forced into marriage, the punishment shall be confinement in the penitentiary not less than two nor more than five years; and if by reason of such abduction a woman be prostituted, the punishment shall be confinement in the penitentiary not less than three nor more than twenty years.

CHAPTER SEVEN.

RAPE.

"Rape" defined..... Definition of "force"..... What threat sufficient..... "Fraud" defined.....	Article 528 529 530 531	Penetration only need be proved..... Defendant must be over fourteen..... Punishment..... Conviction may be had for attempt.....	Article 532 533 534 535
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ARTICLE 528. "Rape" is the carnal knowledge of a woman without her consent, obtained by force, threats or fraud, or the carnal knowledge of a female under the age of ten years, with or without consent, and with or without the use of force, threats or fraud.

"Rape" defined.  
P.C. 523.

ART. 529. The definition of "force," as applicable to assault and battery, applies also to the crime of rape, and it must have been such as might reasonably be supposed sufficient to overcome resistance, taking into consideration the relative strength of the parties, and other circumstances of the case.

Definition of "force."  
P.C. 524.

ART. 530. The "threat" must be such as might reasonably create a just fear of death, or great bodily harm, in view of the relative condition of the parties as to health, strength, and all other circumstances of the case.

What "threat" sufficient.  
P.C. 525.

ART. 531. The "fraud" must consist in the use of some stratagem by which the woman is induced to believe that the offender is her husband or in administering, without her knowledge or consent, some substance producing unnatural sexual desire, or such stupor as prevents or weakens resistance, and committing the offense while she is under the influence of such substance. It is a presumption of law, which can not be rebutted by testimony, that no consent was given under the circumstances mentioned in this article.

"Fraud" defined.  
P.C. 526.

ART. 532. Penetration only is necessary to be proved upon a trial for rape.

Penetration only need be proved.  
P.C. 527.

ART. 533. No person, under the age of fourteen, at the time the offense is charged to have been committed, can be convicted of rape, or assault with intent to commit the offense.

Defendant must be over fourteen.  
P.C. 528.

ART. 534. Whoever shall be guilty of rape shall be punished by death or by confinement in the penitentiary for life, or for any term of years not less than five in the discretion of the jury.

Punishment. (Act Nov. 10, 1886, p. 161.)  
P.C. 529.

ART. 535. If it appear, on the trial of an indictment for rape, that the offense, though not committed, was attempted by the use of any of the means spoken of in articles 529, 530 and 531, but not such as to bring the offense within the definition of an assault with intent to commit rape, the jury may find the defendant guilty of an attempt to commit the offense and affix the punishment prescribed in article 503.

Conviction may be had for "attempt."  
P.C. 530.

CHAPTER EIGHT.

OF ABORTION.

Definition and punishment..... Furnishing the means an accomplice..... Attempt at..... In case of death, murder.....	Article 536 537 538 539	Destroying unborn child..... Not punishable when procured by medical advice, etc.....	Article 540 541
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ARTICLE 536. If any person shall designedly administer to a pregnant woman, with her consent, any drug or medicine, or shall use toward her any violence, or any means whatever, externally or internally applied, and shall thereby procure an abortion, he shall be punished by confinement in the penitentiary not less than two nor more than five years; if it be done without her consent the punishment shall be doubled.

Definition and punishment.  
P.C. 531.

Furnishing the means, an accomplice. P.C. 532.

ART. 537. Any person who furnishes the means for procuring an abortion, knowing the purpose intended, is guilty as an accomplice.

Attempt at. (Act Feb. 12, 1858, p. 172.) P.C. 533.

ART. 538. If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided it be shown that such means were calculated to produce that result, and shall be punished by fine not less than one hundred nor more than one thousand dollars.

In case of death, murder. P.C. 534.

ART. 539. If the death of the mother is occasioned by an abortion so produced, or by an attempt to effect the same, it is murder.

Destroying unborn child. P.C. 535.

ART. 540. If any person shall, during parturition of the mother, destroy the vitality or life in a child, in a state of being born, and before actual birth, which child would otherwise have been born alive, he shall be punished by confinement in the penitentiary for life, or any period not less than five years, at the discretion of the jury.

Not punishable when procured by medical advice. P.C. 536.

ART. 541. Nothing contained in this chapter shall be deemed to apply to the case of an abortion procured or attempted to be procured by medical advice for the purpose of saving the life of the mother.

## CHAPTER NINE.

### ADMINISTERING POISONOUS AND INJURIOUS POTIONS.

	Article		Article
Poisoning food, well, etc.....	542	Death within a year, murder.....	544
Causing another to inhale, etc., injurious substances.....	543	Malpractice punishable.....	545

Poisoning food, well, etc. P.C. 537.

ARTICLE 542. If any person shall mingle or cause to be mingled any other noxious potion or substance with any drink, food or medicine, with intent to kill or injure any other person, or shall willfully poison or cause to be poisoned any spring, well, cistern or reservoir of water with such intent, he shall be punished by imprisonment in the penitentiary not less than two nor more than ten years.

Causing another to inhale injurious substances. (Act Feb. 12, 1858, p. 172.) P.C. 538.

ART. 543. If any person shall, with intent to injure, cause another person to inhale or swallow any substance injurious to health, or any of the functions of the body, or if such substance was administered with intent to kill, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Death within a year, murder. P.C. 539.

ART. 544. If by reason of the commission of the offenses named in the two preceding articles, the death of a person be caused within one year, the offender shall be deemed guilty of murder and be punished accordingly.

Malpractice punishable. P.C. 540.

ART. 545. If any person engaged in the practice of medicine and claiming to be a physician, shall, by the use of any noxious substance, administered in a grossly ignorant manner, produce death, or other great bodily injury, he shall be punished for the offense as any other person would be who had given such substance knowing it to be injurious and intending to kill or injure.

## CHAPTER TEN.

### OF HOMICIDE.

	Article		Article
Definition of.....	546	Body of deceased must be found.....	549
Destruction of life must be complete.....	547	Person killed must be in existence.....	550
Gross neglect, etc., refers to acts of others..	548	Produced by words, etc.....	551

Definition. P.C. 541.

ARTICLE 546. "Homicide" is the destruction of the life of one human being by the act, agency, procurement or culpable omission of another.

ART. 547. The destruction of life must be complete by such act, agency, procurement or omission; but although the injury which caused death might not under other circumstances have proved fatal, yet if such injury be the cause of death, without its appearing that there has been any gross neglect or manifestly improper treatment of the person injured, it is homicide. Destruction of life must be complete. P.C. 542.

ART. 548. The foregoing article, in what is said of gross neglect or improper treatment, has reference to the acts of some person other than him who inflicts the first injury, as of the physician, nurse or other attendant. If the person inflicting the injury which makes it necessary to call aid in preserving the life of the person injured, shall willfully fail or neglect to call such aid, he shall be deemed equally guilty as if the injury were one which would inevitably lead to death. Gross neglect, etc., refers to acts of others. P.C. 543.

ART. 549. No person shall be convicted of any grade of homicide unless the body of the deceased, or portions of it, are found and sufficiently identified to establish the fact of killing. Body of deceased must be found. P.C. 544.

ART. 550. The person upon whom the homicide is alleged to have been committed must be in existence by actual birth. It is homicide, however, to destroy human life actually in existence however frail such existence may be, or however near extinction from other causes. Person killed must be in existence. P.C. 545.

ART. 551. Although it is necessary to constitute homicide that it shall result from some act of the party accused, yet, if words be used which are reasonably calculated to produce and do produce an act which is the immediate cause of death, it is homicide; as for example—if a blind man, a stranger, a child, or a person of unsound mind, be directed by words to a precipice or other dangerous place where he falls and is killed; or if one be directed to take any article of medicine, food or drink, known to be poisonous and which does produce a fatal effect; in these and like cases, the person so operating upon the mind or conduct of the person injured shall be deemed guilty of homicide. Produced by words, etc. P.C. 546.

## CHAPTER ELEVEN. OF JUSTIFIABLE HOMICIDE.

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1. <i>Of a public enemy.</i>		Persons aiding officer also justified..... 563
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Nor a deserter, prisoner, etc.....	555	In suppressing riots..... 566
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ARTICLE 552. Homicide is justifiable in the cases enumerated in the succeeding articles of this chapter. When justifiable. P.C. 547.

### I. OF A PUBLIC ENEMY.

ART. 553. It is lawful to kill a public enemy not only in the prosecution of war, but when he may be in the act of hostile invasion or occupation of any part of the state. A public enemy is any person acting under the authority or enlisted in the service of any government at war with this state or the United States. Persons belonging to hostile tribes of Indians who habitually commit depredations upon the lives or property of the inhabitants of this state, and all persons acting with such tribes are public Killing a public enemy. P.C. 548.

enemies, and this, whether found in the act of committing such depredations, or under circumstances which sufficiently show an intention so to do.

But not by  
poison, etc.  
P.C. 549.

ART. 554. Homicide of a public enemy by poison, or the use of poisoned weapons, is not justifiable.

Nor a deserter,  
prisoner, etc.  
P.C. 550.

ART. 555. Homicide of a public enemy who is a deserter or a prisoner of war, or the bearer of a flag of truce, is not justifiable.

## II. OF A CONVICT.

Execution of  
convict.  
P.C. 551.

ART. 556. The execution of a convict for a capital offense, by a legally qualified officer, under the warrant of a court of competent jurisdiction, is justifiable when the same takes place in the manner authorized by law and directed by warrant.

## III. BY OFFICERS IN THE PERFORMANCE OF A DUTY, AND BY OTHER PERSONS UNDER CERTAIN CIRCUMSTANCES.

By officer in ex-  
ecution of law-  
ful order.  
P.C. 552.

ART. 557. Homicide by an officer in the execution of the lawful orders of magistrates and courts, is justifiable when he is violently resisted and has just ground to fear danger to his own life in executing the order.

Even though  
the order is  
erroneous.  
P.C. 553.

ART. 558. The officer is justifiable, though there may have been an error of judgment on the part of the magistrate or court, if the order emanated from a proper authority.

Qualifications  
of the fore-  
going.  
P.C. 554.

ART. 559. The rule set forth in the two preceding articles is subject to the following restrictions:

1. The order must be that of a magistrate or a court having lawful authority to issue it.

2. It must have such form as the law requires to give it validity.

3. The person executing the order must be some officer duly authorized by law to execute the order, or some person specially appointed in accordance with law for the performance of the duty.

4. If the person executing the order be an officer, and performing a duty which no other person can by law perform, he must have taken the oath of office and have given bond, where such is required by law.

5. The order must be executed in the manner directed by law, and the person executing the same must make known his purpose and the capacity in which he acts.

6. If the order be a written one, and the person against whom it issues, before resistance offered, wishes to see the same, or hear it read, the person charged with its execution shall produce the order and show it or read it.

7. In making an arrest, under written order, the person acting under such order shall, in all cases, declare to the party against whom it is directed the offense of which he is accused, and state the nature of the warrant, unless prevented therefrom by the act of the party to be arrested.

8. The officer, or other person executing an order of arrest is required to use such force as may be necessary to prevent an escape when it is attempted, but he shall not, in any case, kill one who attempts to escape, unless in making, or attempting such escape, the life of the officer is endangered, or he is threatened with great bodily injury.

9. In overcoming a resistance to the execution of an order, the officer, or person executing the same, may oppose such force as is necessary to overcome the resistance; but he shall not take the life of the person resisting unless he has just ground to fear that his own life will be taken, or that he will suffer great bodily injury in the execution of the order.

10. A prisoner, under sentence of death, or of imprisonment in the penitentiary, or attempting to escape from the penitentiary, may be killed by the officer having legal custody of him, if his escape can in no other manner be prevented.

Order may be  
written or ver-  
bal.  
P.C. 555.

ART. 560. The order referred to in this chapter may be either written or verbal, where a verbal order is allowed for the arrest of a person.

ART. 561. Under written orders are included all process in a criminal or civil action which directs the seizure of the person or of property. Written orders include what. P.C. 556.

ART. 562. No officer or other person ordered verbally to arrest another is justified in killing, except the arrest be in a case of felony, or for the prevention of a felony. Verbal order justifies only in felony. P.C. 557.

ART. 563. Persons called in aid of an officer, in the performance of a duty, are justified in the same manner as the officer himself. Persons aiding officer, justified P.C. 558.

ART. 564. All persons opposing the execution of the order, or aiding in an escape, may be treated in the same manner as the person against whom the order is directed, or who is attempting to escape. Persons aiding escape may also be killed. P.C. 559.

ART. 565. Officers acting under the authority of the laws or courts of the United States, have the rights and are liable to the rules prescribed in this chapter. Federal officers included. P.C. 560.

ART. 566. Homicide is justifiable when necessary to suppress a riot, when the same is attempted to be suppressed in the manner pointed out in the Code of Criminal Procedure, and can in no way be suppressed except by taking life. In suppressing riots. P.C. 561.

ART. 567. Homicide is justifiable when committed by the husband upon the person of any one taken in the act of adultery with the wife, provided the killing take place before the parties to the act of adultery have separated. In adultery. P.C. 562.

ART. 568. Homicide can not be justified by reason of the existence of the circumstances spoken of in the preceding article, where it appears that there has been, on the part of the husband, any connivance in or assent to the adulterous connection. But not in case of connivance. P.C. 563.

#### IV. IN DEFENSE OF PERSON OR PROPERTY.

ART. 569. Homicide is permitted in the necessary defense of person or property, under the circumstances and subject to the rules herein set forth. In defense of person and property. P.C. 567.

ART. 570. Homicide is permitted by law when inflicted for the purpose of preventing the offense of murder, rape, robbery, maiming, disfiguring, castration, arson, burglary, and theft at night, or when inflicted upon a person or persons who are found armed with deadly weapons and in disguise in the night time on premises not his or their own, whether the homicide be committed by the party about to be injured or by some person in his behalf, when the killing takes place under the following circumstances: In preventing other felonies. (Act Nov. 6, 1871, pp. 20, 21.) P.C. 568.

1. It must reasonably appear by the acts or by words, coupled with the acts of the person killed, that it was the purpose and intent of such person to commit one of the offenses above named.

2. The killing must take place while the person killed was in the act of committing the offense, or after some act done by him showing evidently an intent to commit such offense.

3. It must take place before the offense committed by the party killed is actually completed; except that, in case of rape, the ravisher may be killed at any time before he has escaped from the presence of his victim, and except, also, in the cases hereafter enumerated.

4. Where the killing takes place to prevent the murder of some other person, it shall not be deemed that the murder is complete so long as the offender is still inflicting violence, though the mortal wound may have been given.

5. If homicide takes place in preventing a robbery, it shall be justifiable if done while the robber is in the presence of the person robbed, or is flying with the money or other article taken by him.

6. In cases of maiming, disfiguring or castration, the homicide may take place at any time while the offender is mistreating with violence the person injured, though he may have completed the offense.

7. In case of arson, the homicide may be inflicted while the offender is

in or at the building or other property burnt, or flying from the place before the destruction of the same.

8. In cases of burglary and theft by night, the homicide is justifiable at any time while the offender is in the building, or at the place where the theft is committed, or is within reach of gunshot from such place or building.

9. When the party slain in disguise is engaged in any attempt, by word, gesture or otherwise, to alarm some other person or persons and put them in bodily fear.

Presumption from use of weapons. P.C. 569.

ART. 571. When the homicide takes place to prevent murder, maiming, disfiguring or castration, if the weapons or means used by the party attempting or committing such murder, maiming, disfiguring or castration are such as would have been calculated to produce that result, it is to be presumed that the person so using them designed to inflict the injury.

In protecting person or property from other attacks. P.C. 570.

ART. 572. Homicide is justifiable also in the protection of the person or property against any other unlawful and violent attack besides those mentioned in the preceding article, and in such cases all other means must be resorted to for the prevention of the injury, and the killing must take place while the person killed is in the very act of making such unlawful and violent attack, and any person interfering in such case, in behalf of the party about to be injured, is not justifiable in killing the aggressor, unless the life or person of the injured party is in peril by reason of such attack upon his property.

Retreat not necessary. P.C. 571.

ART. 573. The party whose person or property is so unlawfully attacked is not bound to retreat in order to avoid the necessity of killing his assailant.

Requisites of the attack. P.C. 573.

ART. 574. The attack upon the person of an individual, in order to justify homicide, must be such as produces a reasonable expectation or fear of death, or some serious bodily injury.

Circumstances justifying in defense of property. P.C. 573.

ART. 575. When, under article 572, a homicide is committed in the protection of property, it must be done under the following circumstances:

1. The possession must be of corporeal property, and not of a mere right, and the possession must be actual and not merely constructive.
2. The possession must be legal, though the right of the property may not be in the possessor.
3. If possession be once lost, it is not lawful to regain it by such means as result in homicide.
4. Every other effort in his power must have been made by the possessor to repel the aggression before he will be justified in killing.

## CHAPTER TWELVE.

### OF EXCUSABLE HOMICIDE.

Definition.....	Article 576	The lawful act must be done by lawful means, etc.....	Article 577
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Definition. P.C. 576.

ARTICLE 576. Homicide is excusable when the death of a human being happens by accident or misfortune; though caused by the act of another, who is in the prosecution of a lawful object by lawful means.

The lawful act must be done by lawful means, etc. P.C. 576.

ART. 577. The lawful act causing the death of another must be done by lawful means and used in a lawful degree. Though lawful for the parent, guardian, schoolmaster, or master, to chastise the child, ward, scholar, or apprentice; yet if this be done with an instrument likely to produce death, or if with a proper instrument the chastisement be cruelly inflicted, and death result, it is murder.

CHAPTER THIRTEEN.

HOMICIDE BY NEGLIGENCE.

	Article		Article
Of two kinds.....	578	Punishment for negligent homicide of first degree.....	586
In the performance of a lawful act.....	579	Of second degree, defined.....	587
“Lawful act” defined.....	580	Can only be committed, when.....	588
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How distinguished from excusable homicide.....	582	Homicide in attempt at felony, not negligent in an attempt at misdemeanor, how punishable.....	591
Examples of.....	583	In a trespass, how punished.....	592
Must be no apparent intention to kill.....	584		
Homicide must be the consequence of the act.....	585		

ARTICLE 578. Homicide by negligence is of two kinds—  
 1. Such as happens in the performance of a lawful act; and  
 2. That which occurs in the performance of an unlawful act.

Of two kinds.  
 P.C. 577.

I. IN THE PERFORMANCE OF A LAWFUL ACT.

ART. 579. If any person, in the performance of a lawful act, shall, by negligence and carelessness, cause the death of another, he is guilty of negligent homicide of the first degree.

In the performance of a lawful act.  
 P.C. 578.

ART. 580. A “lawful act” is one not forbidden by the penal law and which would give no just occasion for a civil action.

“Lawful act” defined.  
 P.C. 579.

ART. 581. To constitute this offense there must be an apparent danger of causing the death of the person killed, or some other.

Must be an apparent danger of causing death.  
 P.C. 580.

ART. 582. The want of proper care and caution distinguishes this offense from excusable homicide. The degree of care and caution is such as a man of ordinary prudence would use under like circumstances.

How distinguished from excusable homicide.  
 P.C. 581.

ART. 583. Throwing timbers by a workman from the roof or upper part of a house into a public street or highway, or where a number of persons are known to be around the house, or discharging fire-arms on or near a public highway, other than a street in a town or city, in such manner as would be likely to injure persons who might be passing, are examples of negligent homicide of the first degree, in case of death resulting therefrom. If death is caused by the careless discharge of fire-arms in a public street of a town or city, the offense will be of a higher degree.

Examples of.  
 P.C. 582.

ART. 584. To bring the offense within the definition of homicide by negligence, either of the first or second degree, there must be no apparent intention to kill.

Must be apparent intention to kill.  
 P.C. 584.

ART. 585. The homicide must be the consequence of the act done or attempted to be done.

Homicide must be consequence of the act.  
 P.C. 585.

ART. 586. Negligent homicide of the first degree shall be punished by confinement in the county jail not exceeding one year, or by fine not exceeding one thousand dollars.

Punishment.  
 P.C. 586.

II. IN THE PERFORMANCE OF AN UNLAWFUL ACT.

ART. 587. The definitions, rules and provisions of the preceding articles of this chapter, with respect to negligent homicide of the first degree, apply also to the offense of negligent homicide in the second degree, or such as is committed in the prosecution of an unlawful act, except when contrary to the following provisions:

“Of second degree” defined, etc.  
 P.C. 587.

ART. 588. Negligent homicide of the second degree can only be committed when the person guilty thereof is in the act of committing, or in attempting the commission of an unlawful act.

Can only be committed, when.  
 P.C. 588.

ART. 589. Within the meaning of an “unlawful act,” as used in this chapter, are included—

“Unlawful act” includes what.  
 P.C. 589.

1. Such acts as by the penal law are called misdemeanors; and,
2. Such acts, not being penal offenses, as would give just occasion for a civil action.

Homicide in an attempt at felony, not negligent.  
P.C. 590.

ART. 590. When one in the execution of, or in attempting to execute, an act made a felony by the penal law, shall kill another, though without an apparent intention to kill, the offense does not come within the definition of negligent homicide.

In an attempt at misdemeanor or punished, how.  
P.C. 591.

ART. 591. When the unlawful act attempted, or executed, is one known as a misdemeanor, the punishment of negligent homicide committed in the execution of such unlawful act shall be imprisonment in the county jail not exceeding three years, or by fine not exceeding three thousand dollars.

In a trespass, etc., how punished.  
P.C. 592.

ART. 592. If the act intended is one for which an action would lie, but not an offense against the *penal* law, the homicide resulting therefrom is a misdemeanor, and may be punished by fine not exceeding one thousand dollars, and by imprisonment in the county jail not exceeding one year.

## CHAPTER FOURTEEN.

### OF MANSLAUGHTER.

	Article	Article
Definition of.....	593	General character of the female in issue.....
"Under the influence of sudden passion" explained.....	594	Discretion of the jury in such cases.....
"Adequate cause" explained.....	595	"Relation" includes whom.....
What are not adequate causes.....	596	Adequate cause must produce the passion..
What are adequate causes.....	597	Provoking a contest with intent to kill, not manslaughter.....
For insult to female, killing must be immediate.....	598	Punishment.....

Definition of.  
P.C. 594.

ARTICLE 593. Manslaughter is voluntary homicide committed under the immediate influence of sudden passion arising from an adequate cause, but neither justified or excused by law.

"Under the influence of sudden passion" explained.  
P.C. 596.

ART. 594. By the expression "under the immediate influence of sudden passion" is meant—

1. That the provocation must arise at the time of the commission of the offense, and that the passion is not the result of a former provocation.

2. The act must be directly caused by the passion arising out of the provocation. It is not enough that the mind is merely agitated by passion arising from some other provocation, or a provocation given by some person other than the party killed.

3. The passion intended is either of the emotions of the mind, known as anger, rage, sudden resentment, or terror, rendering it incapable of cool reflection.

"Adequate cause" explained.  
P.C. 597.

ART. 595. By the expression "adequate cause" is meant such as would commonly produce a degree of anger, rage, resentment or terror in a person of ordinary temper sufficient to render the mind incapable of cool reflection.

What are not adequate causes.  
P.C. 598.

ART. 596. Insulting words or gestures, or an assault and battery, so slight as to show no intention to inflict pain or injury, or an injury to property, unaccompanied by violence, are not *adequate causes*.

What are.  
P.C. 599.

ART. 597. The following are deemed adequate causes:

1. An assault and battery by the deceased, causing pain or bloodshed.

2. A serious personal conflict, in which great injury is inflicted by the person killed, by means of weapons, or other instruments of violence, or by means of great superiority of personal strength, although the person guilty of the homicide were the aggressor, provided such aggression was not made with intent to bring on a conflict and for the purpose of killing.

3. Adultery of the person killed with the wife of the person guilty of the homicide, provided the killing occur as soon as the fact of an illicit connection is discovered.

4. Insulting words or conduct of the person killed towards a female relation of the party guilty of the homicide.

ART. 598. When it is sought to reduce the homicide to the grade of manslaughter, by reason of the existence of the circumstances specified in the fourth subdivision of article 597 of the Penal Code, it must appear that the killing took place immediately upon the happening of the insulting conduct, or the uttering of the insulting words, or so soon thereafter as the party killing may meet with the person killed, after having been informed of such insults.

For insult to female, killing must be immediate. (Act Feb. 12, 1858, pp. 172, 3.) P. C. 590a

ART. 599. In every case where the defense spoken of in the preceding article is relied on, it shall be competent to prove the general character of the female insulted, in order to ascertain the extent of the provocation.

General character of female in issue. (Act Feb. 12, 1858, p. 173.) P. C. 590c.

ART. 600. The jury shall be at liberty to determine in every case whether, under all the circumstances, the insulting words or gestures were the real cause which provoked the killing.

Discretion of jury in such cases. (Act Feb. 12, 1858, p. 173.) P. C. 599c.

ART. 601. Any female under the permanent or temporary protection of the accused, at the time of killing, shall also be included within the meaning of the term *relation*.

"Relation" includes whom. (Act Feb. 12, 1858, p. 173.) P. C. 599d.

ART. 602. In order to reduce a voluntary homicide to the grade of manslaughter, it is necessary not only that adequate cause existed to produce the state of mind referred to in the third subdivision of article 594, but also that such state of mind did actually exist at the time of the commission of the offense.

"Adequate cause" must produce the "passion." P. C. 600.

ART. 603. Though a homicide may take place under circumstances showing no deliberation, yet if the person guilty thereof provoked a contest with the apparent intention of killing, or doing serious bodily injury to the deceased, the offense does not come within the definition of manslaughter.

Provoking a contest with intent to kill, not manslaughter. P. C. 601.

ART. 604. Manslaughter is of various degrees of culpability, according to the circumstances under which it was committed. It shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Punishment. (Act Feb. 12, 1858, p. 173.) P. C. 602.

## CHAPTER FIFTEEN.

### OF MURDER.

	Article	Article
"Murder" defined.....	605	Evidence of threats and deceased's character
The two degrees.....	606	admissible, when.....
Verdict must find of what degree.....	607	Punishment.....

ARTICLE 605. Every person with a sound memory and discretion who shall unlawfully kill any reasonable creature in being within this state, with malice aforethought, either express or implied, shall be deemed guilty of murder. Murder is distinguishable from every other species of homicide by the absence of the circumstances which reduce the offense to negligent homicide or manslaughter, or which excuse or justify the homicide.

"Murder" defined. (Act Feb. 12, 1858, p. 173.) P. C. 607.

ART. 606. All murder committed by poison, starving, torture or with express malice, or committed in the perpetration or in the attempt at the perpetration of arson, rape, robbery or burglary, is murder in the first degree, and all murder not of the first degree is murder of the second degree.

The two degrees. (Act Feb. 12, 1858, p. 173.) P. C. 608

ART. 607. If the jury shall find any person guilty of murder, they shall also find by their verdict whether it is of the first or second degree; and if any person shall plead guilty to an indictment for murder, a jury shall be summoned to find of what degree of murder he is guilty, and in either case they shall also find the punishment.

Verdict must find of what degree. (Act Feb. 12, 1858, p. 174.) P. C. 609.

ART. 608. Where a defendant accused of murder seeks to justify himself on the ground of threats against his own life, he may be permitted to

Evidence of threats and deceased's char-

acter admiss-  
ible, when.  
(Act Feb. 12,  
1858, p. 174.)  
P.C. 612.

introduce evidence of the threats made, but the same shall not be regarded as affording a justification for the offense unless it be shown that at the time of the homicide the person killed by some act then done manifested an intention to execute the threat so made. In every instance where proof of threats has been made it shall be competent to introduce evidence of the general character of the deceased. Such evidence shall extend only to an inquiry as to whether the deceased was a man of violent or dangerous character, or a man of kind and inoffensive disposition, or whether he was such a person as might reasonably be expected to execute a threat made.

Punishment.  
(Act Feb. 12,  
1858, p. 174.)  
P.C. 612a.

ART. 609. The punishment of murder in the first degree shall be death or confinement in the penitentiary for life, and the punishment of murder in the second degree shall be confinement in the penitentiary for not less than five years.

CHAPTER SIXTEEN.

OF DUELING.

	Article		Article
Dueling, etc., how punished.....	610	Homicide in, murder in the first degree.....	611
Dueling, etc., how punished.	<p>ARTICLE 610. Any person who shall, within this state, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons either within the state or out of it, or who shall act as a second, or knowingly aid or assist in any manner those thus offending, shall be deemed guilty of a felony, and upon conviction shall be punished by confinement in the penitentiary not less than two nor more than five years.</p>		
Homicide in, murder in first degree.	<p>ART. 611. If, in any duel hereafter fought within this state, either of the combatants be killed, or receive a wound from which he afterward dies within three months, the survivor shall be deemed guilty of murder in the first degree and be punished accordingly.</p>		
P.C. 605.			

CHAPTER SEVENTEEN.

GENERAL PROVISIONS RELATING TO HOMICIDE.

	Article		Article
Means or instruments used must be consid- ered .....	612	If in a sudden passion not with a deadly weapon.....	614
If injury be done in a cruel manner.....	613	If evil or cruel disposition be exhibited.....	615
Means or in- strument used must be consid- ered.	<p>ARTICLE 612. The instrument or means by which a homicide is committed are to be taken into consideration in judging of the intent of the party offending; if the instrument be one not likely to produce death, it is not to be presumed that death was designed, unless from the manner in which it was used such intention evidently appears.</p>		
P.C. 613.			
If injury be done in a cruel manner.	<p>ART. 613. If any injury be inflicted in a cruel manner, though with an instrument not likely under ordinary circumstances to produce death, the killing will be manslaughter or murder, according to facts of the case.</p>		
P.C. 614.			
If in sudden passion not with deadly weapon.	<p>ART. 614. Where a homicide occurs under the influence of sudden passion, but by the use of means not in their nature calculated to produce death, the person killing is not deemed guilty of the homicide unless it appear that there was an intention to kill, but the party from whose act the death resulted may be prosecuted for and convicted of any grade of assault and battery.</p>		
P.C. 615.			
If evil or cruel disposition be exhibited.	<p>ART. 615. Where the circumstances attending a homicide show an evil or cruel disposition, or that it was the design of the person offending to kill, he is deemed guilty of murder or manslaughter, according to the other facts of the case, though the instrument or means used may not in their nature be such as to produce death ordinarily.</p>		
P.C. 617.			

TITLE XVI.

Of Offenses Against Reputation.

CHAPTER ONE.

OF LIBEL.

	Article		Article
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Actual injury not necessary.....	628	Province of jury.....	643
Intent to injure presumed.....	629	This title relates only to penal actions.....	644
True statement concerning candidate not libel.....	630		

ARTICLE 616. He is guilty of "libel" who, with intent to injure, makes, writes, prints, publishes, sells or circulates any malicious statement affecting the reputation of another in respect to any matter or thing pointed out in this chapter. "Libel" defined. P.C. 618.

ART. 617. If any person be guilty of libel he shall be punished by fine not less than one hundred nor more than two thousand dollars, or by imprisonment in the county jail not exceeding two years; and the court may enter up judgment and issue an order thereupon directing the sheriff to seize and destroy all the publications, prints, paintings or engravings constituting the libel as charged in the indictment or information. Punishment. P.C. 619.

ART. 618. If any person with intent to injure the reputation of another, shall, without lawful authority, make, publish or circulate a writing purporting to be the act of some other person, and which comes within the definition of libel, as given in this chapter, he shall be punished in the same manner as if the act purported to be his own; and the rules with respect to libel apply also to the making and circulation of such false writing. Publishing writing purporting to be done by another. P.C. 620.

ART. 619. He is the maker of a libel who originally contrived and either executed it himself by writing, printing, engraving or painting or dictated or caused it to be done by others. "Maker" explained. P.C. 621.

ART. 620. He is the publisher of a libel who, either of his own will or by the persuasion or dictation of another, executes the same in any of the modes pointed out as constituting a libel; but if any one by force or threats is compelled to execute such libel he is guilty of no offense. "Publisher." P.C. 622.

ART. 621. He is guilty of circulating a libel who, knowing its contents, either sells, distributes or gives, or who with malicious design, reads or exhibits it to others. "Circulating." P.C. 622a.

ART. 622. The written, printed or published statement to come within the definition of libel, must convey the idea either— The ideas the statement must convey. P.C. 623.

1. That the person to whom it refers has been guilty of some penal offense; or

2. That he has been guilty of some act or omission which, though not a penal offense, is disgraceful to him as a member of society, and the natural consequence of which is to bring him into contempt among honorable persons; or

3. That he has some moral vice, or physical or mental defect or disease, which renders him unfit for intercourse with respectable society, and such as should cause him to be generally avoided; or

4. That he is notoriously of bad or infamous character, or

5. That any person in office, or a candidate therefor, is dishonest, and therefore unworthy of such office, or that while in office he has been guilty of some malfeasance rendering him unworthy of the place.

Mode of publication.  
P.C. 624.

ART. 623. A libel may be either written, printed, engraved, etched or painted, but no verbal defamation comes within the meaning thereof; and whenever a defendant is accused of libel, by means of a painting, engraving or caricature, it must clearly appear therefrom that the person said to be defamed was, in fact, intended to be represented by such painting, engraving or caricature.

A manuscript must be circulated.  
P.C. 625.

ART. 624. In order to render any manuscript a libel it must be circulated or posted up in some public place.

Editor, publisher, etc., *prima facie* guilty.  
P.C. 626.

ART. 625. If the libel be in printed form, and issues or is sold in any office or shop where a public newspaper is conducted, or where books or other printed works are sold or printed, the editor, publisher and proprietor of such newspaper, or any one of them, or the owner of such shop, is to be deemed guilty of making or circulating such libel until the contrary is made on the trial to appear.

But may avoid responsibility, how.  
P.C. 627.

ART. 626. The editor, publisher or proprietor of a public newspaper may avoid the responsibility of making or publishing a libel by giving the true author of the same, provided such author be a resident of this state and a person of good character, except in cases where it is shown that such editor, publisher or proprietor caused the libel to be published with malicious design.

Mechanical executor not guilty, unless.  
P.C. 628.

ART. 627. No person shall be convicted of libel merely on evidence that he has made a manuscript copy of a libel or has performed the manual labor of printing it, unless it be shown positively that such person was actuated by a malicious design against the person defamed. But the person for whose account or by whose order it was printed shall be presumed to have known the intent of the publication, and shall be liable for the offense.

Actual injury not necessary.  
P.C. 629.

ART. 628. It is sufficient to constitute the offense of libel if the natural consequence of the publication of the same is to injure the person defamed, although no actual injury to his reputation has been sustained.

Intent to injure presumed.  
P.C. 630.

ART. 629. The intent to injure is to be presumed if such would be the natural consequence of the libel, though no actual proof be made that the defendant had such design; and in all trials of libel the jury are to judge from the facts proved relative to the malicious design of the defendant as to what penalty ought to be imposed under the restrictions herein prescribed.

True statement concerning candidate, not libel.  
P.C. 631.

ART. 630. It is no offense to make true statements of fact, or express opinions as to the integrity or other qualifications of a candidate for any office or public place or appointment.

Not concerning qualifications of professional men.  
P.C. 632.

ART. 631. It is no offense to publish true statements of fact as to the qualifications of any person for any occupation, profession or trade.

Not criticism of any book, work of art, etc.  
P.C. 633.

ART. 632. It is no offense to publish any criticism or examination of any work of literature, science or art, or any opinion as to the qualifications or merits of the author of such work.

ART. 633. To constitute libel there must be some injury intended to the reputation of *persons*, and no publication as to the government or any of the branches thereof as such, is an offense under the name of seditious writings or any other name.

The offense relates to *persons* only.  
P.C. 634.

ART. 634. It is no libel to make publication respecting the merits or doctrines of any particular religion, system of morals or politics, or of any particular form of government.

Respecting religious systems, etc.  
P.C. 635.

ART. 635. It is no libel to make any publication respecting a body politic or corporate as such.

Corporation can not be libeled.  
P.C. 636.

ART. 636. It is no libel to publish any statement respecting any legislative or judicial proceedings, whether the statement be in fact true or not, unless in such statement a charge of corruption is made against some person acting in a legislative or judicial capacity.

Nor legislative or judicial proceedings, unless, etc.  
P.C. 637.

ART. 637. Where any person, by virtue of his office, is required to record the proceedings of any department of the government or of any body corporate or politic, or of any association organized for purposes of business, or as a religious, moral, benevolent, literary or scientific institution, he can not be charged with libel for any entry upon the minutes or records of such department, body or association, made in the course of his official duties.

Recorder of minutes, etc., not liable.  
P.C. 638.

ART. 638. If any false statement be entered upon the minutes or record of proceedings of any corporate body or association included within the meaning of the preceding article, which would be libel if written, printed, published or circulated by an individual, according to the previous articles of this chapter, the persons being members of such body or association, who assent to, and direct such libelous statement to be made, are guilty of libel under the same rules as if the false statement had been written, published or circulated in any other manner than as a part of the record or proceedings of such body or association, subject, however, to the restrictions contained in the succeeding article.

But all members of the association who assent, are.  
P.C. 639.

ART. 639. The libelous statement referred to in the preceding article is not to be presumed to have been made with intent to injure, from the mere fact that such would be the natural result thereof, unless it appear from other facts that the statement was in fact made with that intention.

Intent to injure not presumed, unless, etc.  
P.C. 640.

ART. 640. The word "malicious" is used to signify an act done with evil or mischievous design, and it is not necessary to prove any special facts showing ill feeling on the part of the person who is concerned in making, printing, publishing or circulating a libelous statement against the person injured thereby.

"Malicious" signifies what.  
P.C. 641.

ART. 641. No statement made in the course of a legislative or judicial proceeding, whether true or false, although made with intent to injure and from malicious purposes, comes within the definition of libel.

Statement in legislative or judicial proceedings not included.  
P.C. 642.

ART. 642. In the following cases the truth of any statement charged as a libel may be shown in justification of the defendant:

Truth of the statement may be shown, when.  
P.C. 643

1. Where the publication purports to be an investigation of the official conduct of officers or men in a public capacity.

2. Where it is stated in the libel that a person has been guilty of some penal offense, and the time, place and nature of the offense is specified in the publication.

3. Where it is stated in the libel that a person is of notoriously bad or infamous character.

4. Where the publication charges any person in office, or a candidate therefor, with a want of honesty, or of having been guilty of some malfeasance in office, rendering him unworthy of the place. In other cases the truth of the facts stated in the libel can not be inquired into.

ART. 643. The jury in every case of libel are not only the judges of the facts and of the law, under the direction of the court, in accordance

Province of jury.  
P.C. 644.

with the constitution, but they are judges of the intent with which a libel may have been published or circulated, subject to the rules prescribed in this chapter, and in rendering their verdict they are to be governed by a consideration of the nature of the charge contained in the libel, the general reputation of the person said to be defamed and the degree of malice exhibited by the defendant in the commission of the offense.

This title relates only to penal action.  
P.C. 645.

ART. 644. This title regulates the law with regard to libel when prosecuted as a penal offense, and is not intended to have any operation upon the subject so far as relates to civil remedies for the recovery of damages.

CHAPTER TWO.  
OF SLANDER.

	Article		Article
	645	Procedure in prosecutions for .....	646
Definition and punishment.		ARTICLE 645. If any person shall, orally or otherwise, falsely and maliciously, or falsely and wantonly, impute to any female in this state, married or unmarried, a want of chastity, he shall be deemed guilty of slander, and, upon conviction, shall be fined not less than one hundred nor more than one thousand dollars, and the jury may, in addition thereto, find a verdict for the imprisonment of defendant in the county jail not exceeding one year.	
Procedure in prosecution for.		ART. 646. In any prosecution, under this chapter, it shall not be necessary for the state to show that such imputation was false, but the defendant may in justification show the truth of the imputation, and the general reputation for chastity of the female alleged to have been slandered may be inquired into.	

CHAPTER THREE.

OF FALSE ACCUSATION AND THREATS OF PROSECUTION.

	Article		Article
	647	Threats of prosecution to extort money .....	649
	648	Publishing another as a coward .....	650
Combination to falsely accuse another.		ARTICLE 647. If any two or more persons shall combine falsely to accuse another of an offense, and shall, in pursuance of such combination make such accusation before a court or magistrate, or in any newspaper or other public print, or by the circulation of hand-bills, or in any other public manner, by writing, they shall be punished by fine not exceeding two thousand dollars, or by imprisonment in the county jail not exceeding two years.	
To extort money.		ART. 648. If the purpose of such combination be to extort money or any pecuniary advantage, the punishment shall be fine not to exceed two thousand dollars and imprisonment in the penitentiary not to exceed three years.	
Threats of prosecution to extort money.		ART. 649. If any person, with intent to extort money, or any pecuniary advantage, shall threaten to accuse another of a felony, before any court, or to publish any other statement respecting him which would come within the meaning of a libel, he shall be punished in the manner set forth in article 647.	
Publishing another as a coward.		ART. 650. If any person shall, in any newspaper or hand-bill, or by notice posted up in any place, publish another as a coward, or use toward him other opprobrious language, he shall be fined in an amount not exceeding two hundred dollars; and if such publication or posting be in consequence of a refusal to fight a duel, the punishment shall be fine not less than five hundred nor more than one thousand dollars.	

**TITLE XVII.**  
**Of Offenses Against Property.**

**CHAPTER ONE.**  
**OF ARSON.**

	Article		Article
Definition of.....	651	Owner may destroy, except when.....	658
“House” defined.....	652	The exceptions.....	659
Offense complete, when.....	653	Part owner can not burn.....	660
Design the essence of the offense.....	654	Punishment.....	661
Intent presumed, when.....	655	Burning a state building.....	662
Explosions included.....	656	Attempt at arson.....	663
Except when.....	657		

ARTICLE 651. “Arson” is the willful burning of any house included within the meaning of the succeeding article of this chapter. Definition of.  
P.C. 679.

ART. 652. A “house” is any building, edifice, or structure, inclosed with walls, and covered, whatever may be the materials used for building. “House”  
defined.  
P.C. 680.

ART. 653. The burning is complete when the fire has actually communicated to a house, though it may be neither destroyed nor seriously injured. Offense com-  
plete, when.  
P.C. 684.

ART. 654. It is of no consequence by what means the fire is communicated to a house, if the burning is with design. It may be by setting fire to any combustible material communicating therewith, by an explosion, or by any other means. “Design” the  
essence of  
the offense.  
P.C. 685.

ART. 655. When fire is communicated to a house by means of the burning of another house, or some combustible matter, it shall be presumed that the intent was to destroy every house actually burnt, provided there was any apparent danger of such destruction. Intent pre-  
sumed, when.  
P.C. 686.

ART. 656. The explosion of a house by means of gunpowder or other explosive matter, comes within the meaning of arson. Explosions in-  
cluded.  
P.C. 687.

ART. 657. A house blown up, or otherwise destroyed, for the purpose of saving another house from fire, is not within the meaning of arson. Except when.  
P.C. 688.

ART. 658. The owner of a house may destroy it by fire or explosion, without incurring the penalty of arson, except in the cases mentioned in the succeeding article. Owner may de-  
stroy, except  
when.  
P.C. 689.

ART. 659. When a house is within a town or city; or when it is insured; or when there is within it any property belonging to another; or when there is apparent danger by reason of the burning thereof, that the life or person of some individual, or the safety of some house belonging to another will be endangered, the owner, if he burn the same, is guilty of arson, and shall be punished accordingly. Exceptions.  
P.C. 690.

ART. 660. One of the part owners of a house is not permitted to burn it. Part owner  
can not burn.  
P.C. 691.

ART. 661. If any person be guilty of arson, he shall be punished by confinement in the penitentiary not less than five nor more than twenty years. Punishment.

ART. 662. If any person shall willfully burn the capitol building of the state, the treasury building or comptroller’s office, the supreme court building, the executive mansion, or the general land office, he shall be punished by confinement in the penitentiary for life. Burning a state  
building.  
P.C. 694.

Attempt at arson.  
P.C. 708.

ART. 663. If any person shall, by any means calculated to effect the object, attempt to commit the offense of arson, he shall be punished by confinement in the penitentiary not less than two nor more than seven years.

CHAPTER TWO.

OF OTHER WILLFUL BURNING.

Rules of arson applicable.....	Article 664	Burning personal property insured.....	Article 671
Burning other buildings, hay, lumber, etc..	665	Burning personal property of another.....	672
Ship or other vessel, or boat.....	666	Punishment doubled in case of personal in-	
Offense complete, when.....	667	jury.....	673
Bridge burning.....	668	When death ensues it is murder.....	674
Burning woodland or prairie.....	669	Attempts at other willful burning.....	675
Offense complete, when.....	670		

Rules of arson applicable.  
P.C. 697.

ARTICLE 664. The rules and definitions contained in the preceding chapter, with respect to arson, apply also to willful burnings under the provisions of this chapter where they are not clearly inapplicable.

Burning other buildings, hay, lumber, etc.  
P.C. 698.

ART. 665. If any person shall willfully burn any building not coming within the description of a house as defined in the preceding chapter, or shall willfully burn any stack of corn, hay, fodder, grain or flax, or any pile of boards, lumber or wood, or any fence or other inclosure, the property of another, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars.

Ship or other vessel or boat.  
P.C. 699.

ART. 666. If any person shall willfully burn any ship or other vessel, or any boat of any kind whatsoever, he shall be punished by confinement in the penitentiary not less than two nor more than seven years, or by fine not exceeding two thousand dollars.

Offense complete, when.  
P.C. 700.

ART. 667. This offense is complete only when some person other than the person offending has an interest in the property by insurance, or otherwise, at the time the burning takes place.

Bridge burning (Act Feb. 12, 1858, p. 177.)  
P.C. 701.

ART. 668. If any person shall willfully burn any bridge, which by law or usage is a public highway, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years, or by fine not exceeding five thousand dollars.

Burning woodland or prairie.  
P.C. 702.

ART. 669. If any person shall willfully burn, or cause to be burned, any woodland or prairie not his own, at any time between the first of July and the fifteenth of February succeeding, he shall be fined not less than fifty nor more than three hundred dollars.

Offense complete, when.  
P.C. 703.

ART. 670. The offense named in the foregoing article is complete where the person offending sets fire to his own woodland or prairie, and the fire communicates to the woodland or prairie of another.

Burning personal property insured.  
(Act Feb. 12, 1858, p. 178.)  
P.C. 704.

ART. 671. If any person with intent to defraud, shall willfully burn any personal property owned by himself, which shall be at the time insured against loss or damage from fire, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Burning personal property of another.  
P.C. 705.

ART. 672. If any person shall willfully burn any personal property belonging to another, the punishment for which is not otherwise provided for in this chapter, he shall be fined not exceeding two thousand dollars.

Punishment doubled in case of personal injury.  
P.C. 706.

ART. 673. If any bodily injury less than death is suffered by any person, by reason of the commission of any of the offenses named in this and the preceding chapter, the punishment may be increased by the jury so as not to exceed double that which is prescribed in cases where no such injury is suffered.

When death ensues, murder.  
P.C. 707.

ART. 674. Where death is occasioned by any of the offenses described in this and the preceding chapter, the offender is guilty of murder.

ART. 675. If any person shall, by any means calculated to effect the object, attempt to commit any of the offenses enumerated in this chapter, he shall receive such punishment as may be assessed by the jury, not to exceed one-half of the penalty which would have been affixed in case the offense attempted had been actually committed; *provided*, that when the punishment shall be confinement in the penitentiary, in no case shall the lowest term be less than two years.

Attempts at other willful burning. (Act Feb. 12, 1858, p. 178.) P.C. 708.

## CHAPTER THREE.

### MALICIOUS MISCHIEF.

Article		Article
676	Willfully sinking vessel, etc.	683
677	Destroying telegraph and obstructing mes- sage	684
678	Obstructing railway track	685
679	Killing animal to injure owner	686
680	Wantonly abusing dumb animal	687
680a	Using animals without consent of owner	690
681	Removing buoy, etc.	691
682	Robbing orchards, gardens, etc.	
	Destroying fruit, corn, etc.	683
	Injuring fence, leaving open gates, etc.	684
	Dogging stock when fence insufficient	685
	"Insufficient fence" defined	686
	Removing rock, earth, etc., from premises of another	687
	Herding stock in half mile of residence	690
	Each hour a separate offense	691

ARTICLE 676. If any person shall willfully and maliciously cast away, sink or destroy, in any way other than by fire, any vessel or boat which, together with its cargo, if any, shall be of the value of one hundred dollars or more, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars. If the life of any person is lost by such act, the offender is guilty of murder.

Willfully sinking vessels, etc. (Act Feb. 12, 1858, p. 178.) P.C. 700.

ART. 677. If any person shall intentionally break, cut, pull or tear down, misplace, or in any other manner injure any telegraph wire, post, machinery, or other necessary appurtenance to any telegraph line, or in any way willfully obstruct or interfere with the transmission of messages along such telegraph line, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not less than one hundred nor more than two thousand dollars.

Destroying telegraph or obstructing message. P.C. 710.

ART. 678. If any person shall willfully place any obstruction upon the track of any railroad, or remove any rail therefrom, or in any other way injure such road, or shall do any damage to any railroad, or car, whereby the life of any person might be endangered, he shall be punished by imprisonment in the penitentiary not less than two nor more than seven years. If the life of any person is lost by any such unlawful act, the offender is guilty of murder.

Obstructing railway track. P.C. 711.

ART. 679. If any person shall willfully kill, maim, wound, poison or disfigure any horse, ass, mule, cattle, sheep, goat, swine, dog or other domesticated animal, or any domesticated bird of another, with intent to injure the owner thereof, he shall be fined not less than ten nor more than two hundred dollars. And in prosecutions under this article the intent to injure may be presumed from the perpetration of the act.

Killing animal to injure owner (Act Feb. 12, 1858, p. 178.) P.C. 713.

ART. 680. If any person shall willfully or wantonly kill, maim, wound, disfigure, poison, or cruelly and unmercifully beat and abuse any animal or bird included in the preceding article, he shall be fined not exceeding two hundred and fifty dollars.

Wantonly killing dumb animal, etc. P.C. 714.

ART. 680a. Any person who shall hereafter take up and use any horse, mare, gelding, mule, ox, cow, or any other dumb animal, the property of another, and without the consent of the owner thereof, shall be fined in any sum not less than ten nor more than one hundred dollars; *provided*, that nothing herein contained shall prevent a prosecution for the theft of such animals whenever the offense, of which said party shall be guilty, shall come within the meaning of that crime; *and, provided*, that this

Using animals without consent of owner. (Acts 1879, ch. 129, p. 129.)

article shall not be construed as in any way interfering with the laws regulating estrays.

Removing buoy, etc. (Act Feb. 12, 1858, p. 179.) P. C. 715.

ART. 681. If any person shall willfully and mischievously remove any buoy, beacon, light, or any other mark or signal erected for the purpose of indicating the channel in any bay, river, lake or other navigable water within the state; or shall erect any false buoy, beacon, light, or mark, or signal to indicate the channel in any such bay, river, lake or other navigable water, with intent to mislead or deceive, he shall be punished by confinement in the penitentiary not less than two nor more than five years, or by fine not exceeding two thousand dollars; and if death occurs by reason of such unlawful conduct, the offender is guilty of murder.

Robbing orchards, gardens, etc. (Act April 4, 1874, p. 55.)

ART. 682. If any person shall take or carry away from the farm, orchard, garden or vineyard of another, without his consent, any fruit, melons or garden vegetables, he shall be fined in any sum not exceeding one hundred dollars.

Destroying fruit, corn, etc. P. C. 716.

ART. 683. If any person shall willfully and mischievously injure or destroy any growing fruit, corn, grain, or other agricultural product or property real or personal, of any description whatever, in such manner as that the injury does not come within the description of any of the offenses against property otherwise provided for by this Code, he shall be punished by fine not exceeding one thousand dollars.

Injuring fence, leaving open gates, etc. (Act April 23, 1873, pp. 41-2.)

ART. 684. If any person shall break, pull down or injure the fence of another without his consent, or shall willfully and without the consent of the owner thereof open and leave open any gate leading into the inclosure of another, or shall knowingly cause any hogs, cattle, mules, horses or other stock to go within the inclosed lands of another without his consent; or shall tie or stake out, or cause to be tied or staked out, to graze within any inclosed lands not his own and without the consent of the owner, any horse, mule or other animal, he shall be fined in any sum not less than ten nor more than one hundred dollars, and, in addition thereto, may be imprisoned in the county jail not exceeding one year.

Dogging stock when fence insufficient. (Act Oct. 18, 1871, p. 10.)

ART. 685. Any owner, proprietor, lessee, or other person in charge of cleared and cultivated land surrounded with an insufficient fence, or the agent or employé of such person, who shall with fire-arms, dogs or otherwise, maim, wound or kill any cattle, horses or hogs of another within such inclosure, or who shall cause or procure the same to be done, shall be fined not less than ten nor more than two hundred dollars.

"Insufficient fence" defined.

ART. 686. An "insufficient fence," as used in the preceding article, means a fence less than five feet high, or with openings or crevices in some part thereof sufficiently large for the passage of the animal so maimed, wounded or killed.

Removing rock, earth, etc. from premises of another. (Act June 24, 1876, p. 28.)

ART. 687. If any person shall knowingly enter upon the land or premises of another, and take or remove therefrom any rock, earth, sand, coal, slate or mineral of any description, without the consent of the owner of such land or premises, he shall be fined in any sum not exceeding one thousand dollars.

NOTE.—Articles 688 and 689 of this chapter, submitted by the Revisers, were stricken out by the legislature before adopting the Codes.—L.

Herdng stock in half mile of residence. (Act June 2, 1873, p. 186.)

ART. 690. If any person shall herd any drove of horses or cattle, numbering more than twenty-five head, upon land not his own and within one-half mile of the residence of any citizen of this state, and shall fail, neglect or refuse to remove such drove at once upon the request of such citizen, he shall be fined not exceeding one hundred dollars.

Each hour a separate offense. (Act June 2, 1873, p. 186.)

ART. 691. Each hour of delay after notice given or request made, shall constitute a separate offense under the preceding article.

CHAPTER FOUR.

OF INFECTIOUS DISEASES AMONG ANIMALS.

<p>Failing to confine horse with glanders or farcy..... 692                  Using horse with glanders or farcy..... 693                  Permitting sheep with scab to run at large..... 694                  Sheep owner violating law protecting wool interests..... 694—Note</p>	<p style="text-align: center;">Article</p> <p>Permitting sheep with scab to graze along public road..... 695                  Importation of sheep with scab..... 696                  Offenses by inspectors of sheep, how punished..... 696—Note</p>	<p style="text-align: right;">Article</p>
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ARTICLE 692. If any person shall willfully and knowingly fail, neglect or refuse to place and keep in secure confinement, separate and apart from all other stock, any animal of the horse or ass species diseased with glanders or farcy, belonging to him or subject to his control, he shall be fined not less than twenty-five nor more than two hundred dollars, or imprisoned in the county jail not less than ten days nor more than three months.

Failing to confine horse with glanders or farcy.  
 (Act Aug. 19, 1876, p. 211.)

ART. 693. If any person shall ride, drive, or in any manner use any animal of the horse or ass species diseased with glanders or farcy, knowing the same to be so diseased, he shall be punished as prescribed in the preceding article.

Using horse with glanders or farcy.  
 (Act Nov. 8, 1866, p. 102.)

ART. 694. If any person owning or controlling sheep affected with the scab or other infectious or contagious disease, shall permit such sheep to run at large or in charge of any one beyond the limits of his own land, he shall be fined not exceeding one thousand dollars.

Permitting sheep with scab to run at large.  
 (Act Dec. 28, 1861, p. 21.)

NOTE.—Section 10, chapter 57, acts 1879, provides that—  
 “Any owner or person in charge of sheep, who shall willfully and knowingly fail to comply with or violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than one hundred dollars.” (See appendix.)—L.

Sheep owner violating law protecting wool interests.

ART. 695. If any person shall drive or graze, or cause to be driven or grazed, along or upon any public road in this state, any sheep affected with scab, knowing the same to be so affected, he shall be fined not exceeding one thousand dollars.

Or to graze along public road.  
 (Act Aug. 21, 1876, p. 227.)

ART. 696. If any person shall drive, or cause to be driven, into this state, from any other state or country, any sheep affected with scab or other infectious or contagious disease, knowing the same to be so affected, he shall be fined not exceeding one thousand dollars.

Importation of sheep with scab.  
 (Act Dec. 28, 1861, p. 21.)

NOTE.—Section 9, chapter 57, acts 1879, provides that—  
 “Any inspector of sheep, who shall fail to comply with any of the provisions of this act, or who shall willfully and knowingly give a false certificate in any case where he is required to give a certificate, or who shall, willfully, and with intent to harrass, or put to expense, any owner or person in charge of sheep, notify said owner or person in charge, that his flock is diseased, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five nor more than five hundred dollars.” (See appendix.)—L.

Offenses by inspectors of sheep, how punished.

CHAPTER FIVE.

OF CUTTING AND DESTROYING TIMBER.

<p>Punishment for..... 697                  Floating or rafting unbranded lumber..... 697—Note                  Buying or selling floated lumber not branded..... 697—Note                  “Lumber” and “shingles” defined..... 697—Note                  “Timber” and “owner” include what..... 698</p>	<p style="text-align: center;">Article</p> <p>Procedure in prosecutions..... 699                  Modes of proving ownership..... 700                  Road repairs, etc., not included..... 701                  If the offense is theft, punishable as such... 702                  Destroying pecan or walnut timber..... 703</p>	<p style="text-align: right;">Article</p>
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ARTICLE 697. If any person, without the consent of the owner, shall knowingly cut down or destroy any tree or timber upon any land not his own; or shall knowingly, and without such consent, carry away any such timber, he shall be fined not less than ten nor more than five hundred dollars.

Punishment for.  
 P.C. 717.

NOTE.—Section 5, chapter 71, acts 1879, provides that—

Floating  
or rafting  
unbranded  
lumber.

Any person who shall float any unbranded log or timber (other than pickets, posts, rails or firewood) for market, or who shall fail to make the reports required by this act, or who shall brand any log or timber of another, without his authority, or who shall deface any brand on any log or timber, except when sawing or manufacturing it into lumber or other commodity for use in building, or who, when not an employé of the owner, shall, without the written consent of the owner, take into possession any branded or unbranded log or timber, cut for floating, sawing, or any sawed timber, lumber or shingles floating in any waters or deposited on the bank of any stream, shall be deemed guilty of a misdemeanor, and fined not exceeding two hundred dollars for each offense. And that—

Buying or selling  
floated  
lumber not  
branded.

Any person who shall buy or sell any timber or log floating, or that has been floated, before the same has been branded, shall be guilty of a misdemeanor, and fined not more than ten dollars for each log or piece of timber so purchased, sold or traded for. And that—

“Lumber” and  
“shingles” defined.

By “lumber” is meant lumber attached or bound together for floating, and not loose lumber; and by “shingles” is meant shingles in bundles or bunches, and not loose shingles. (See appendix for the act in full.)—L.

“Timber” and  
“owner” include  
what.

ART. 698. The word “timber,” as used in the preceding article, includes rails or other articles manufactured from timber; and the word “owner” includes the state and any corporation, public or private, owning lands within this state.

Procedure in  
prosecutions.  
P.C. 718.

ART. 699. In any prosecution under article 697, the indictment or information need not allege the name of the owner of the timber, but it shall be sufficient for it to state that the timber was not the property of the accused; and it shall be sufficient to describe the land by the name of the owner, or of the original grantee, or by any name or names by which it may be commonly known in the neighborhood in which the alleged offense was committed.

Modes of proving  
ownership.  
(Act Feb. 12,  
1858, p. 179.)  
P.C. 718a.

ART. 700. Upon the trial of any case coming within the provisions of article 697, the state may prove the ownership of the land to be in some person other than the defendant by either of the following modes:

1. By the copy of a grant duly certified from the general land office.
2. By a deed, or a copy of a deed, or other evidence of title, duly certified, from the office of the clerk of the county court of the county where the prosecution is pending.
3. By a certificate from the comptroller's office, or from the assessor and collector of the county, that some person other than the defendant pays taxes on the land.
4. By verbal testimony of title, or of notorious use and possession of the land by some person other than the defendant; and such proof shall be held sufficient, until contradicted by competent evidence on the part of the defendant, that he is the owner of the land.

Road repairs,  
etc., not in-  
cluded.  
P.C. 722.

ART. 701. Nothing in the foregoing articles of this chapter contained shall render any person guilty of an offense who cuts or uses timber for the purpose of making or repairing any public road or bridge passing over, or immediately adjacent to, the land on which such tree or timber may be found, or who uses a reasonable amount of wood standing outside of an inclosure for the purpose of making fires while traveling upon the road.

If the offense is  
theft, punish-  
able as such.  
P.C. 723.

ART. 702. Nothing contained in the foregoing articles of this chapter shall exempt a person from the penalty affixed to the offense of theft, whenever timber is taken in such manner as to come within the definition of that offense.

Destroying  
pecan or wal-  
nut timber.  
(Act April 20,  
1871, p. 42.)

ART. 703. If any person shall cut down or otherwise destroy or injure any pecan or walnut tree on land not his own, without authority in writing from the owner of such pecan or walnut tree, he shall be punished by fine of not less than twenty-five nor more than fifty dollars.

CHAPTER SIX.  
OF BURGLARY.

	Article		Article
"Burglary" defined.....	704	Punishment.....	711
Same subject.....	705	Other offense after entry, punishable.....	712
"Entry" defined.....	706	Same subject.....	713
Further defined.....	707	Actual breaking necessary in case of domestic, etc.....	714
"Breaking" defined.....	708	Attempt at burglary, how punished.....	715
"House" defined.....	709	"Attempt" defined.....	716
"Day-time" defined.....	710		

ARTICLE 704. The offense of "burglary" is constituted by entering a house by force, threats or fraud, at night, or in like manner by entering a house during the day, and remaining concealed therein until night, with the intent, in either case, of committing felony or the crime of theft. "Burglary" defined. (Act Aug. 21, 1876, p. 331.) P.C. 724.

ART. 705. He is also guilty of burglary who, with intent to commit a felony or theft, by breaking, enters a house in the day-time. Same subject. P.C. 725.

ART. 706. The "entry" into a house, within the meaning of article 704, includes every kind of entry but one made by the free consent of the occupant, or of one authorized to give such consent; it is not necessary that there should be any actual breaking to constitute the offense of burglary, except when the entry is made in the day-time. "Entry" defined. P.C. 725a.

ART. 707. The entry is not confined to the entrance of the whole body; it may consist of the entry of any part for the purpose of committing a felony; or it may be constituted by the discharge of fire-arms or other deadly missile into the house, with intent to injure any person therein; or it may be constituted by the introduction of any instrument for the purpose of taking from the house any personal property, although no part of the body of the offender should be introduced. Further defined. P.C. 726.

ART. 708. By the term "breaking," as used in article 705, is meant that the entry must be made with actual force. The slightest force, however, is sufficient to constitute breaking; it may be by lifting the latch of the door that is shut, or by raising a window, the entry at a chimney, or other unusual place, the introduction of the hand or any instrument to draw out the property through an aperture made by the offender for that purpose. "Breaking" defined. P.C. 727.

ART. 709. A "house," within the meaning of this chapter, is any building or structure erected for public or private use, whether the property of the United States, of this state, or of any public or private corporation or association, or of any individual, and of whatever material it may be constructed. "House" defined. P.C. 728.

ART. 710. By the term "day-time" is meant any time of the twenty-four hours from thirty minutes before sunrise until thirty minutes after sunset. "Day time" defined. P.C. 737.

ART. 711. The punishment for burglary shall be imprisonment in the penitentiary not less than two nor more than twelve years. Punishment.

ART. 712. If a house be entered in such manner as that the entry comes within the definition of burglary, and the person guilty of such burglary shall, after so entering, commit theft, or any other offense, he shall be punished for burglary, and also for whatever other offense is so committed. Other offense committed after entry, punishable. (Act Feb. 12, 1855, p. 180.) P.C. 734.

ART. 713. If the burglary was effected for the purpose of committing one felony, and the person guilty thereof shall, while in the house, commit another felony, he shall be punishable for any felony so committed as well as for the burglary. Same subject. P.C. 735.

ART. 714. An entry into a house for the purpose of committing theft, unless the same is effected by actual breaking, is not burglary when the same is done by a domestic servant, or other inhabitant of such house; but a theft committed by such person after entering a house is punishable as in other cases. Actual breaking necessary in case of domestic. P.C. 736.

Attempt at burglary, how punished. (Act Feb. 11, 1860, pp. 100-1.) P.C. 737a.

ART. 715. If any person shall attempt to commit the crime of burglary, he shall be punished by confinement in the penitentiary not less than two nor more than four years.

"Attempt" defined. (Act Feb. 11, 1860, pp. 100-1.) P.C. 737b.

ART. 716. An "attempt," in the sense in which the word is used in the preceding article, is an endeavor to accomplish the crime of burglary carried beyond mere preparation, but falling short of the ultimate design in any part of it.

CHAPTER SEVEN.

OF OFFENSES ON BOARD OF VESSELS, STEAMBOATS AND RAILROAD CARS.

	Article		Article
Burglariou entry on board vessel, etc.....	717	Rules, etc., of burglary applicable.....	720
By actual breaking in day-time.....	718	Theft by servant on board, punishable as such.....	721
Other offense committed after entry, punishable.....	719		

Burglariou entry on board vessel. P.C. 738.

ARTICLE 717. If any person, by any of the means enumerated in article 704, shall at night enter any vessel, steamboat or railroad car, with intent to commit a felony or theft, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

By actual breaking in day-time. P.C. 739.

ART. 718. If any person shall, by breaking, enter a vessel, steamboat or railroad car in the day-time, with intent to commit a felony or theft, he shall be punished as prescribed in the preceding article.

Other offense, committed after entry, punishable.

ART. 719. If a vessel, steamboat or railroad car be entered in such manner as that the entry, if made in a house, would be burglary, and the person so entering shall commit theft or any other offense after entry, he shall be punished for the offense defined in article 717, and also for whatever other offense he may so commit.

Rules, etc., of burglary applicable. P.C. 741.

ART. 720. The definitions, rules and explanations of terms in the preceding chapter are applicable to such terms in this chapter; and the rules prescribed in articles 704, 705, 706, 707 and 708 of the preceding chapter shall also apply to similar cases on board of a vessel, steamboat or railroad car.

Theft by a servant on board, punishable as such. P.C. 742.

ART. 721. A theft on board a steamboat, vessel or railroad car, committed by a servant or employé, except in cases where there has been an actual breaking in, is punishable simply as theft.

CHAPTER EIGHT.

OF ROBBERY.

"Robbery" defined.....	Article 722	Fraudulent acquisition of property by threats.....	Article 723
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"Robbery" defined and punished. (Act Nov. 12, 1866, p. 202.) P.C. 743.

ARTICLE 722. If any person by assault, or by violence and putting in fear of life or bodily injury, shall fraudulently take from the person or possession of another, any property, with intent to appropriate the same to his own use, he shall be punished by confinement in the penitentiary not less than two nor more than ten years.

Fraudulent acquisition of property by threats. (Act Feb. 12, 1858, p. 180.) P.C. 744.

ART. 723. If any person, by threatening to do some illegal act injurious to the character, person or property of another, shall fraudulently induce the person so threatened to deliver to him any property, with intent to appropriate the same to his own use, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

CHAPTER NINE.

OF THEFT IN GENERAL.

	Article		Article
"Theft" defined.....	724	Particular penalties exclude general punishment.....	734
Property must have some value.....	725	Theft of twenty dollars and over, how punished.....	735
Asportation not necessary.....	726	Of less than twenty dollars, how punished.....	736
The "taking" must be wrongful, etc.....	727	General penalties not applicable, when.....	737
Possession and ownership need not be in the same person.....	728	Voluntary return of stolen property.....	738
Possession, how constituted.....	729	"Steal" or "stolen" include what.....	739
Theft of one's own property, when.....	730	Stealing of certain agricultural products.....	740
Part owner can not commit, unless when.....	731	Stealing record book or filed paper.....	741
"Property" defined.....	732	Stealing from a wreck.....	742
Animals of domestic breed included.....	735	Receiving stolen property.....	743

ARTICLE 724. "Theft" is the fraudulent taking of corporeal personal property belonging to another from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking.

"Theft" defined.  
P.C. 745.

ART. 725. The property must be such as has some specific value capable of being ascertained. It embraces every species of personal property capable of being taken.

Property must have some value.  
P.C. 746.

ART. 726. To constitute "taking" it is not necessary that the property be removed any distance from the place of taking; it is sufficient that it has been in the possession of the thief, though it may not be moved out of the presence of the person deprived of it; nor is it necessary that any definite length of time shall elapse between the taking and the discovery thereof; if but a moment elapse, the offense is complete.

Asportation not necessary.  
P.C. 747.

ART. 727. The taking must be wrongful, so that if the property came into the possession of the person accused of theft by lawful means, the subsequent appropriation of it is not theft, but if the taking, though originally lawful, was obtained by any false pretext, or with any intent to deprive the owner of the value thereof, and appropriate the property to the use and benefit of the person taking, and the same is so appropriated, the offense of theft is complete.

The "taking" must be wrongful, etc.  
P.C. 748.

ART. 728. It is not necessary, in order to constitute theft, that the possession and ownership of the property be in the same person at the time of taking.

Possession and ownership need not be in same person.  
P.C. 749.

ART. 729. Possession of the person so unlawfully deprived of property is constituted by the exercise of actual control, care or management of the property, whether the same be lawful or not.

Possession, how constituted.  
P.C. 750.

ART. 730. No person can be guilty of theft by taking property belonging to himself, except in the following cases:

Theft of one's own property, when.  
P.C. 751.

1. Where the property has been deposited with the person in possession, as a pledge or security for debt.

2. Where it is in the possession of an officer of the law, by process from a court of competent jurisdiction.

3. Where the property is in the possession of an executor or administrator, for the purpose of administration.

4. In all other cases where the person so deprived of possession is, at the time of taking, lawfully entitled to the possession thereof as against the true owner.

ART. 731. If the person accused of the theft be part owner of the property, the taking does not come within the definition of theft, unless the person from whom it is taken be wholly entitled to the possession at the time.

Part owner can not commit unless, when.  
P.C. 752.

ART. 732. The term "property," as used in relation to the crime of theft, includes money, bank bills, goods of every description commonly sold as merchandise, every kind of agricultural produce, clothing, any writing

"Property" defined.  
P.C. 753.

containing evidence of an existing debt, contract, liability, promise or ownership of property, real or personal, any receipts for money, discharge, release, acquittance, and printed book or manuscript, and in general any and every article commonly known as and called personal property, and all writings of every description, provided such property possesses any ascertainable value.

Animals of domestic breed, included.  
P.C. 755.

ART. 733. Within the meaning of "personal property," which may be the subject of theft, are included all domesticated animals and birds, when they are proved to be of any specific value.

Particular penalties exclude general punishment.  
P.C. 754.

ART. 734. Theft of certain particular kinds of property, as of a horse, property wrecked, etc., have a punishment affixed, differing from the general punishment of the crime of theft; whenever, therefore, the law provides a particular punishment for theft, committed in regard to a special kind of property, theft of such property is not included within the law affixing a general penalty to the offense; but in other cases, whenever it is declared to be an offense to steal or otherwise fraudulently appropriate property, the provision is intended to include any and every species of personal property according to its general and broadest signification.

Theft of \$20 and over, how punished.  
(Act Feb. 12, 1858, p. 181.)  
P.C. 756.

ART. 735. Theft of property of the value of twenty dollars or over, shall be punished by confinement in the penitentiary not less than two nor more than ten years.

Petty theft, how punished.  
(Act Aug. 21, 1876, p. 242.)  
P.C. 757.

ART. 736. Theft of property, under the value of twenty dollars, shall be punished by imprisonment in the county jail not exceeding one year, during which time the prisoner may be put to hard work, and by fine not exceeding five hundred dollars, or by such imprisonment without fine.

General penalties not applicable, when.  
P.C. 758.

ART. 737. The two preceding articles do not apply to theft of property from the person, nor to cases of theft of any particular kind of property, where the punishment is specially prescribed.

Voluntary return of stolen property.  
(Act Feb. 12, 1858, p. 181.)  
P.C. 759.

ART. 738. If property, taken under such circumstances as to constitute theft, be voluntarily returned within a reasonable time, and before any prosecution is commenced therefor, the punishment shall be by fine not exceeding one thousand dollars.

"Steal" or "stolen" include what.  
P.C. 760.

ART. 739. The words "steal" or "stolen," when used in this Code in reference to the acquisition of property, include property acquired by theft.

Stealing of certain agricultural products.  
P.C. 761.

ART. 740. The stealing or feloniously taking of any growing, standing or ungathered Indian corn, wheat, cotton, potatoes, rice, or other agricultural product, shall hereafter be deemed theft; and any person who shall hereafter steal or feloniously take, pluck, sever, or carry away any Indian corn, or wheat, cotton, potatoes, rice, or other agricultural product, growing, standing or remaining ungathered in any plantation, field or other ground, shall, on conviction thereof, be deemed guilty of theft and suffer punishment as in other cases of theft.

Stealing record book or filed paper.  
(Act Feb. 12, 1858, p. 181.)  
P.C. 753a.

ART. 741. If any person shall take and carry away any record book or filed paper from any clerk's office, public office, or other place where the same may be lawfully deposited, or from the lawful possession of any person whatsoever, with intent to destroy, suppress, alter or conceal, or in any wise dispose of the same, so as to prevent the lawful use of such record book or filed paper, he shall be deemed guilty of theft and punished by imprisonment in the penitentiary not less than three nor more than seven years.

Stealing from a wreck.  
P.C. 770.

ART. 742. If any person, with intent to deprive the true owner of the value thereof, shall appropriate to his own use, or dispose of to his own benefit, any property taken or driven on shore from any vessel wrecked, stranded or burnt on the sea shore, or on any river, bay or harbor of the state, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

ART. 743. If any person shall receive or conceal property, which has been acquired by another, in such manner as that the acquisition comes within the meaning of the term theft, knowing the same to have been so acquired, he shall be punished in the same manner as by law the person stealing the same would be liable to be punished.

Receiving stolen property. (Act Feb. 12, 1858, pp. 180-1) P.C. 745a.

## CHAPTER TEN.

### OF THEFT FROM THE PERSON.

Punishment for.....	Article 744	Ingredients of the offense.....	Article 745
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ARTICLE 744. If any person shall commit theft by privately stealing from the person of another, he shall be punished by confinement in the penitentiary not less than two nor more than seven years.

Punishment for. P.C. 762.

ART. 745. To constitute this offense it is necessary that the following circumstances concur:

Ingredients of the offense. P.C. 763.

1. The theft must be from the person; it is not sufficient that the property be merely in the presence of the person from whom it is taken.
2. The theft must be committed without the knowledge of the person from whom the property is taken, or so suddenly as not to allow time to make resistance before the property is carried away.
3. It is only necessary that the property stolen should have gone into the possession of the thief; it need not be carried away in order to complete the offense.

## CHAPTER ELEVEN.

### THEFT OF ANIMALS.

Theft of a horse, etc., how punished.....	Article 746	Willfully driving stock from range, theft...	Article 749
Theft of cattle, how punished.....	747	Party may drive stock in range.....	750
Theft of sheep, hog, or goat, how punished. 748		What proof sufficient for the state.....	751

ARTICLE 746. If any person shall steal any horse, ass or mule, he shall be punished by confinement in the penitentiary not less than five nor more than fifteen years.

Theft of horse, etc., how punished. (Act Feb. 12, 1858, p. 181.) P.C. 765.

ART. 747. If any person shall steal any cattle, he shall be punished by confinement in the penitentiary not less than two nor more than five years.

Theft of cattle, how punished. (Act May 17, 1873, p. 80.) P.C. 766.

ART. 748. If any person shall steal any sheep, hog or goat, he shall, if the value of the property stolen is twenty dollars or over, be punished by confinement in the penitentiary not less than two nor more than five years. If the value of the property is under twenty dollars, he shall be punished by imprisonment in the county jail not exceeding one year, during which time the prisoner may be put to hard work, and by fine not exceeding five hundred dollars, or by such imprisonment without fine.

Theft of sheep, hogs, etc., how punished. P.C. 766a. (Act to adopt and establish P.C. and C. of C. P., passed Feb. 21, 1879.)

ART. 749. If any person shall willfully take into possession and drive, use, or remove from its accustomed range, any live stock not his own, without the consent of the owner and with intent to defraud the owner thereof, he shall be deemed guilty of theft, and on conviction shall be confined in the penitentiary not less than two nor more than five years, or be fined in a sum not to exceed one thousand dollars, or by both such imprisonment and fine, at the discretion of the jury trying the case.

Willfully driving stock from range, theft. (Act Nov. 12, 1866, p. 187.) P.C. 766b.

ART. 750. Nothing in the preceding article contained shall be construed to prevent any person from driving his own, and other stock that may be mixed therewith, to the nearest convenient point within the usual range of such stock, for separation.

Party may drive stock in range. (Act Nov. 12, 1866, p. 187.) P.C. 766c.

What proof sufficient for the state. (Act Nov. 12, 1866, p. 188.) P. C. 766d.

ART. 751. In any prosecution under article 749, it shall only be necessary for the state to prove the act of driving, using or removing from its accustomed range any live stock not belonging to or under the control of the accused, and it shall devolve upon the accused to show any fact under which he can justify or mitigate the offense.

CHAPTER TWELVE.

MISCELLANEOUS PROVISIONS RELATING TO THE RECOVERY OF STOLEN ANIMALS AND THE DETECTION AND PUNISHMENT OF THIEVES.

	Article	Article
Want of bill of sale, <i>prima facie</i> evidence of illegal possession. (Act Nov. 12, 1866, p. 223.) (Act to adopt and establish P. C. and C. of C. P., passed Feb. 21, 1879.)	Want of bill of sale <i>prima facie</i> evidence of illegal possession..... 752 Driving stock to market without bill of sale. 753 Butchering unmarked or unbranded animal 754 Not applicable to animals raised by butcher 755	Butcher failing to make report of animals slaughtered..... 756 Auctioneer selling animal without written statement, etc..... 757 Auctioneer failing to report sales of animals 758

ARTICLE 752. Upon the trial of any person charged with the theft of any animal of the horse, ass or cattle species, the possession of such stolen animal by the accused without a written transfer or bill of sale containing a specific description of such animal, shall be *prima facie* evidence against the accused that such possession was illegal.

Driving stock to market without bill of sale. (Act Nov. 13, 1866, p. 224.)

ART. 753. Any person who may be found in any county of this state driving to market any animals such as are specified in the preceding article, and who has not in his possession a bill of sale or transfer for each and all of said animals, containing their marks and brands, or a list of such marks and brands of any such animals as were raised by himself, both said bill of sale and list being duly certified as recorded by the clerk of the county court of the county from which such animals have been driven, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding two thousand dollars.

Butchering unmarked or unbranded animal. (Act Nov. 13, 1866, p. 224.)

ART. 754. If any butcher or other person engaged in the slaughter of animals shall kill, or cause to be killed, any unmarked or unbranded animal for market, or shall purchase and kill, or cause to be killed, any animal without having taken a bill of sale or written transfer from the person selling the same, he shall be fined not less than fifty nor more than three hundred dollars.

Not applicable to animals raised by butcher. (Act Nov. 13, 1866, p. 224.)

ART. 755. The preceding article shall not apply to the slaughter of an animal raised by the person slaughtering the same.

Butcher failing to make reports of animals slaughtered. (Act Nov. 13, 1866, p. 224.)

ART. 756. If any person engaged in the slaughter and sale of animals for market in any county, city, town or village in this state, shall fail to report to the commissioners' court of the county in which he transacts such business, at each regular term thereof, the number, color, age, sex, marks and brands of every animal slaughtered by him, since the last term of said court, accompanied with a bill of sale or written conveyance to him for every animal slaughtered, save such as were raised by himself, which shall be specified, he shall be punished by fine not less than fifty nor more than three hundred dollars.

Auctioneer selling animal without written statement, etc. (Act April 14, 1874, p. 98.)

ART. 757. If any auctioneer or other person shall sell at auction any horse, mule or ox, without first requiring from the party for whom such sale is made, a written statement signed by him of the manner in which, and the name and residence of the person from whom he acquired such animal, he shall be fined not less than fifty nor more than one hundred dollars.

ART. 758. If any auctioneer or other person shall sell at auction any horse, mule or ox, and shall fail, within ten days after such sale, to file with the clerk of the county court the written statement specified in the preceding article, duly attested with his certificate as to its genuineness, and accompanied with a further certificate containing an accurate description of the animal sold, together with the names and residence of the seller and purchaser, he shall be punished as prescribed in the preceding article.

Auctioneer failing to report sales of animals. (Act April 14, 1874, p. 98.)

## CHAPTER THIRTEEN.

### ILLEGAL MARKING AND BRANDING AND OTHER OFFENSES RELATING TO STOCK.

	Article		Article
Illegal marking and branding.....	759	Skinning cattle.....	765
Altering or defacing mark or brand.....	760	Milking another's cow.....	766
Using mark or brand not upon record.....	761	Driving cattle from range.....	767
Same subject.....	762	Preceding article qualified.....	768
Killing unmarked or unbranded cattle.....	763	Procedure in such cases.....	769
Procedure in prosecutions for.....	764		

ARTICLE 759. Every person who shall mark or brand any horse, mule, ass or cattle, or who shall mark any sheep, goat or hog, not being his own, and without the consent of the owner, and with intent to defraud, shall be punished in the same manner as if he had committed a theft of such animal.

Illegal marking and branding. P.C. 767.

ART. 760. Every person who shall alter or deface the mark or brand of any horse, mule, ass or cattle, or shall alter or deface the mark of any sheep, goat or hog, not being his own property, and without the consent of the owner, and with intent to defraud, shall be punished in the same manner as if he had committed a theft of such animal.

Altering or defacing mark or brand. (Act Feb. 12, 1858, pp. 181-2.) P.C. 768.

ART. 761. If any person shall mark or brand any unmarked or unbranded stock with a mark or brand not upon record, he shall be punished by fine not exceeding five hundred dollars.

Using mark or brand not on record. (Act Nov. 12, 1866, p. 188.)

ART. 762. If any person shall alter or change any mark or brand upon any stock of his own, or that is under his control, without first having such changed mark or brand recorded, he shall be punished as prescribed in the preceding article.

Same subject. *Ib.*

ART. 763. If any person shall knowingly kill any unmarked or unbranded animal of the cattle species, or any unmarked hog, sheep or goat, not his own, he shall be fined not less than twenty-five nor more than one hundred dollars.

Killing unmarked or unbranded cattle. *Ib.*

ART. 764. In prosecutions under the preceding article it shall only be necessary for the state to allege and prove that the animal killed was not the property of the accused, without stating or proving the true owner of such animal.

Procedure in prosecutions for.

ART. 765. If any person shall remove the hide, or any part thereof, from any cattle not his own, and without the consent of the owner of said cattle, he shall be fined not less than twenty nor more than fifty dollars.

Skinning cattle. P.C. 769.

ART. 766. If any person, without the consent of the owner, shall take up, use or milk any cow not his own, he shall, for every such offense, be punished by fine not exceeding ten dollars.

Milking another's cow. (Act Nov. 12, 1866, p. 188.) P.C. 769a.

ART. 767. If any person shall willfully kill, or destroy, or drive, or remove from its accustomed range, any live stock not his own, without the consent of the owner, under such circumstances as not to constitute theft, he shall nevertheless, be guilty of misdemeanor, and shall be punished by fine not exceeding one thousand dollars.

Driving cattle from range, etc. (Act Nov. 12, 1866, p. 187.) P.C. 769b.

Preceding article qualified.  
(Act Nov. 12, 1866, p. 187.)  
P.C. 766c.

ART. 768. Nothing in the preceding article shall be construed to prevent any person from driving his own and other stock, which may be mixed therewith, until the same can be conveniently separated; *provided*, that nothing herein shall be construed to authorize any person, under any circumstances, to remove any live stock, not his own, from their usual range.

Procedure in such cases.  
(Act Nov. 12, 1866, p. 187.)  
P.C. 766d.

ART. 769. In any prosecution under article 767, it shall only be necessary to prove the act of killing, or destruction, or driving, using or removing from the range, of any stock not belonging to or under the control of the accused, and it shall devolve upon the accused to show any fact under which he can justify or mitigate the offense.

## CHAPTER FOURTEEN.

### OFFENSES RELATING TO ESTRAYS.

Unlawfully disposing of an estray.....	Article 770	Taking up and using estray without complying with the law.....	Article 771
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Unlawfully disposing of an estray.  
(Act Feb. 12, 1858, p. 184.)  
P.C. 775a.

ARTICLE 770. If any person shall unlawfully remove, sell, or in any other manner dispose of any animal which has been taken up by him as an estray, he shall be punished by fine not exceeding two hundred and fifty dollars.

Taking up and using without complying with the law.  
*Ib.* P.C. 775b.

ART. 771. If any person shall, without complying with the laws regulating estrays, take up and use, or otherwise dispose of any animal coming within the meaning of an estray, he shall be punished as prescribed in the preceding article. If the unlawful taking or disposition of an estray animal be effected in such manner as to come within the meaning of theft, the person guilty of the same shall be punished for that offense.

## CHAPTER FIFTEEN.

### OFFENSES RELATING TO THE PROTECTION OF STOCK-RAISERS IN CERTAIN LOCALITIES.

Inspector giving a fraudulent certificate....	Article 772	Driving stock out of county without owner's consent.....	Article 778
Counterbranding cattle without owner's consent .....	773	Failing to take bill of sale in purchasing animal.....	779
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Inspector giving a fraudulent certificate.  
(Act Aug 23, 1876, p. 302, §31.)

ARTICLE 772. Any inspector of hides and animals who shall give a certificate of inspection without having first made such inspection in accordance with law, or who shall fraudulently issue any certificate of inspection of any hides or animals, shall be fined not less than fifty nor more than five hundred dollars.

Counterbranding cattle without consent of owner.  
*Ib.* §32.

ART. 773. Any person who shall counterbrand any cattle without the consent of the owner, or his agent, shall be fined not less than ten nor more than fifty dollars for each animal so counterbranded.

Clandestine cattle driving across Rio Grande.  
*Ib.* §34.

ART. 774. Any person who shall drive any cattle across the Rio Grande river into Mexico, at any other point than where a United States custom-house is established, or where there is a place of inspection by United States custom-house officers, or without first having the same inspected in accordance with law, shall be confined in the penitentiary not less than two nor more than five years.

ART. 775. Any person who shall ship from any port in this state any hides of cattle imported from Mexico without having first procured a certificate of importation and inspection in accordance with law, shall be fined not less than one nor more than five dollars for each hide so shipped.

Shipping hides imported from Mexico without inspection.  
*Ib.* §35.

ART. 776. Any person who shall sell any hides of cattle without the same having been inspected shall be punished as prescribed in the preceding article.

Selling hides without inspection.  
*Ib.* p. 303, §35.

ART. 777. Any person who shall drive any cattle out of any county with the intention of driving the same beyond the limits of the state, to a market, without first having road-branded the same in accordance with law, shall be fined not less than twenty nor more than one hundred dollars for each animal so driven.

Driving cattle out of county to market without road-brand.  
*Ib.* p. 303, §37.

ART. 778. Any person who shall drive any cattle or horses out of any county, without the written authority of the owner thereof, duly authenticated as the law requires, and without first having the same duly inspected, shall be punished as prescribed in the preceding article.

Driving stock out of county without owner's consent, etc.  
*Ib.* p. 303, §38.

ART. 779. Any person who shall purchase any animals or hides of cattle without obtaining a bill of sale from the owner or his agent, shall be fined not less than twenty nor more than one hundred dollars for each animal or hide so purchased.

Failing to take bill of sale in purchasing animals.  
*Ib.* p. 303, §39.

ART. 780. Any person who shall, as the agent of another, sell any cattle without first having obtained a power of attorney from the owner, duly authenticated, shall be fined not less than fifty nor more than five hundred dollars.

Agent selling without power of attorney.  
*Ib.* p. 303, §40.

ART. 781. Any person who shall, in originally branding or marking cattle, use more than one mark or brand, shall be fined not less than twenty-five nor more than one hundred dollars for each animal so branded or marked.

Using more than one brand or mark.  
*Ib.* p. 304, §41.

ART. 782. Any person who shall brand or mark any animal, except in a pen, shall be fined not less than ten nor more than fifty dollars for each animal so branded or marked.

Branding or marking outside of a pen.  
*Ib.*

ART. 783. Any clerk of the county court who shall record any brand when the person having the same recorded fails to designate the part of the animal upon which the same is to be placed, shall be fined not less than ten nor more than fifty dollars.

Clerk improperly recording brand.  
*Ib.* p. 304, §43.

ART. 784. If any agent of any railroad, steamship, sailing vessel, or shipping company of any kind, shall receive for shipment any cattle, unless such cattle have been duly inspected according to law, he shall be fined not less than twenty-five nor more than one thousand dollars for each animal so unlawfully shipped.

Agent of railroad, etc., receiving for shipment uninspected cattle.  
*Ib.* p. 304, §45.

ART. 785. The provisions of this chapter shall not apply to the counties of Grimes, Madison, Walker, Trinity, Dallas, Ellis, Hopkins, Franklin, Titus, Red River, Grayson, Cooke, Rockwall, Hunt, Rains, Wood, Van Zandt, Kaufman, Limestone, Freestone, Navarro, McLennan, Anderson, Henderson, Cherokee, Fannin, Lamar, Delta, Rusk, Panola, Shelby, Brazos, Leon, Robertson, San Jacinto, Polk, Tyler, Jasper, Newton, Hardin, Nacogdoches, Houston, Angelina, Sabine, San Augustine, Smith, Upshur, Gregg, Camp, Denton, Collin, Bowie, Cass, Marion, Morris, Hill, Johnson, Fayette, Austin, Washington, Burleson, Bastrop and Harrison.

Counties exempted from the operations of this chapter  
*Ib.* §46.

NOTE.—Chapter 130, acts 1879, amends section 46 of the act of August 23, 1876, striking the counties of McLennan and Navarro from the exempted list, and adding thereto the following counties: Chambers, Colorado, Fort Bend, Galveston, Harris, Jefferson, Lee, Liberty, Montgomery, Parker, Tarrant and Walker.

Section 46, as amended, provides that in counties bordering on the lines of the state, *except those bordering on Red river*, or in any county, *exempt from the operations of the act*, where there is a depot or place for the shipment of cattle, the governor shall appoint an inspector who shall inspect, under the provisions of the act, all stock about to be driven out of the state.

Query—Would not some of the provisions of this chapter apply to *exempted* counties, when inspectors have been appointed therein by the governor? (See R. C. S., article 4659.)—L.

CHAPTER SIXTEEN.

EMBEZZLEMENT.

	Article		Article
Defined and punished.....	786	By carrier.....	788
By factor or commission merchant.....	787	"Money" and "property" defined.....	789

Defined and punished.  
P.C. 771.

ARTICLE 786. If any officer, agent, clerk, or attorney at law or in fact, of any incorporated company or institution, or any clerk, agent, attorney at law or in fact, servant or employé of any private person, copartnership, or joint stock association, or any consignee or bailee of money or property, shall embezzle, fraudulently misapply, or convert to his own use without the consent of his principal or employer, any money or property of such principal or employer which may have come into his possession, or be under his care by virtue of such office, agency or employment, he shall be punished in the same manner as if he had committed a theft of such money or property.

By factor or commission merchant.  
(Act Feb. 12, 1858, p. 182.)  
P.C. 771a.

ART. 787. If any factor or commission merchant shall embezzle or fraudulently misapply or convert to his own use, any money, goods, produce, commodity or other property, which shall have come into his possession, or shall be under his care by virtue of his office, agency or employment, he shall be punished in the same manner as if he had committed a theft of such money, goods, produce, commodity or other property.

By carrier.  
(Act Feb. 12, 1858, p. 182.)  
P.C. 772.

ART. 788. If any carrier to whom any money, goods or other property shall have been delivered to be carried by him, or if any other person who shall be intrusted with such property, shall embezzle or fraudulently convert to his own use any such money, goods or property, either in the mass as the same were delivered or otherwise, he shall be deemed guilty of theft, and shall be punished as prescribed for that offense according to the value of the money, goods or other property so embezzled or converted.

"Money" and "property" defined.

ART. 789. The term "money," as used in this chapter, includes, besides gold, silver, copper or other coin, bank bills, government notes or other circulating medium current as money; and the term "property" includes any and every article commonly known and designated as personal property, and all writings of every description that may possess any ascertainable value.

CHAPTER SEVENTEEN.

OF SWINDLING AND THE FRAUDULENT DISPOSITION OF MORTGAGED PROPERTY.

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I. SWINDLING.

"Swindling" defined.  
(Act Feb. 12, 1858, p. 182.)  
P.C. 773a.

ARTICLE 790. "Swindling" is the acquisition of any personal or movable property, money or instrument of writing conveying or securing a valuable right by means of some false or deceitful pretense or device, or fraudulent representation with intent to appropriate the same to the use of the party so acquiring, or of destroying or impairing the rights of the party justly entitled to the same.

Certain wrongful acts included.  
16. P.C. 773b.

ART. 791. Within the meaning of the term "swindling" are included the following wrongful acts:

1. The exchange of property upon the false pretense that the party is the owner or has the right to dispose of the property given in exchange.
2. The purchase of property upon the faith and credit of some other

person upon the false pretense that such other person has given the accused the right to use his name or credit in making the acquisition.

3. The obtaining by false pretense the possession of any instrument of writing, certificate, field-notes or other paper relating to lands, the property of another, with the intent that thereby the proper owner shall be defeated of a valuable right in such lands.

4. The special enumeration of cases of swindling, above set forth, shall not be understood to exclude any case which, by fair construction of the language, comes within the meaning of the preceding article.

ART. 792. Within the meaning of "money," as used in this chapter, are included also bank bills, or other circulating medium current as money.

"Money" includes bank bills.

*Ib.* P.C. 773c.

ART. 793. It is not necessary, in order to constitute the offense of swindling, that any benefit shall accrue to the person guilty of the fraud or deceit, nor that any injury shall result to the persons intended to be defrauded, if it is sufficiently apparent that there was a willful design to receive benefit or cause an injury.

No benefit need accrue to accused.

*Ib.* P.C. 773d.

ART. 794. Where property, money or other articles of value enumerated in the definition of swindling, are obtained in such manner as to come within the meaning of theft, or some other offense known to the law, the rules herein prescribed with regard to swindling shall not be understood to take any such case out of the operation of the law which defines such other offense.

If the act constitutes any other offense, etc.

*Ib.* p. 184.  
P.C. 773e.

ART. 795. If any executor, administrator or guardian having charge of any estate, real, personal or mixed, shall, unlawfully and with intent to defraud any heir, legatee, ward or distributee interested in such estate, convert the same or any part thereof to his own use, he shall be deemed guilty of the offense of swindling.

Executor, etc., converting estate, guilty of swindling.

*Ib.* P.C. 773f.

ART. 796. Every person guilty of swindling shall be punished in the same manner as is provided for the punishment of theft, according to the amount of the money or the value of the property or instrument of writing so fraudulently acquired.

Punishment.

*Ib.* P.C. 773g.

II. FRAUDULENT DISPOSITION OF MORTGAGED PROPERTY.

ART. 797. If any person has given, or shall hereafter give any mortgage, deed of trust or other lien, in writing, upon any personal or movable property, and shall remove the same or any part thereof out of the state, or shall sell or otherwise dispose of the same with intent to defraud the person having such lien, either originally or by transfer, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Fraudulent disposition of mortgaged property punished.

*Ib.* p. 183.  
P.C. 773.

CHAPTER EIGHTEEN.

OF OFFENSES COMMITTED IN ANOTHER COUNTRY OR STATE.

Bringing stolen property into this state.....	Article 798	Requisites of guilt under preceding article..	Article 799
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ARTICLE 798. If any person who shall have committed an offense in any foreign country, state, or territory, which if committed in this state would have been robbery, theft, or receiving of stolen goods or property, knowing the same to have been stolen, shall bring said property into this state, he shall be deemed guilty of robbery, theft or receiving of stolen goods, knowing the same to have been stolen, as the case may be, and shall be punished as if the offense had been committed in this state.

Bringing stolen property into this state.

P.C. 774.

ART. 799. To render a person guilty under the preceding article, it must appear that by the law of the state or territory from which the property was taken and brought to this state, the act committed would also have been robbery, theft or receiving of stolen goods.

Requisites of guilt under preceding article.

P.C. 775.

**TITLE XVIII.**  
**Of Miscellaneous Offenses.**

**CHAPTER ONE.**  
**OF CONSPIRACY.**

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Definition.  
(Act Oct. 26,  
1871, p. 15.)  
P.C. 776.

ARTICLE 800. A "conspiracy" is an agreement entered into between two or more persons to commit any one of the offenses hereafter named in this chapter.

When offense complete.  
*Ib.* P.C. 777.

ART. 801. The offense of conspiracy is complete, although the parties conspiring do not proceed to effect the object for which they have so unlawfully combined.

Agreement must be positive.  
*Ib.* P.C. 778.

ART. 802. Before any conviction can be had for the offense of conspiracy, it must appear that there was a positive agreement to commit one of the offenses hereafter named in this chapter. It will not be sufficient that such agreement was contemplated by the parties charged.

Mere threat not sufficient.  
*Ib.* P.C. 779.

ART. 803. A threat made by two or more persons acting in concert will not be sufficient to constitute conspiracy.

What crimes the subject of.  
*Ib.* P.C. 780.

ART. 804. The agreement, to come within the definition of conspiracy, must be to commit one or more of the following offenses, to wit: murder, robbery, arson, burglary, rape, theft or forgery.

Punishments.  
*Ib.* P.C. 781.

ART. 805. Conspiracy to commit murder shall be punished by confinement in the penitentiary not less than two nor more than ten years. Conspiracy to commit any one of the other offenses named in the preceding article shall be punished by confinement in the penitentiary not less than two nor more than five years.

To kill, same as murder.  
(Act Oct. 26,  
1871, p. 16.)  
P.C. 782.

ART. 806. A conspiracy to kill a human being shall be deemed a conspiracy to commit murder.

Conspiracy to commit offense in another state.  
*Ib.* P.C. 783.

ART. 807. A conspiracy entered into in this state for the purpose of committing any one of the offenses named in article 804, in any other of the states or territories of the United States, or in any foreign territory, shall be punished in the same manner as if the conspiracy so entered into was to commit the offense in this state.

Conspiracy in another state to commit offense in this.

ART. 808. A conspiracy entered into in another state or territory of the United States, to commit any one of the offenses named in article 804 in this state, shall be punished in the same manner as if the conspiracy had been entered into in this state.

CHAPTER TWO.

OF THREATS.

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ARTICLE 809. If any person shall threaten to take the life of any human being, or to inflict upon any human being any serious bodily injury, he shall be punished by fine of not less than one hundred nor more than two thousand dollars, and, in addition thereto, he may be imprisoned in the county jail not exceeding one year.

Threat to take life, etc. (Act Feb. 22, 1875, p. 51.) P.C. 784.

ART. 810. In order to render a person guilty of the offense provided for in the preceding article, it is necessary that the threat be seriously made.

Threat must be seriously made. *Id.* P.C. 785.

ART. 811. It is for the jury to determine, in every case of prosecution under article 809, whether the threat was seriously made or was merely idle and with no intention of executing the same.

Which is a question of fact. *Id.* pp. 51-2. P.C. 786.

ART. 812. A threat that a person will do any act merely to protect himself, or to prevent the commission of some unlawful act by another, does not come within the meaning of this chapter.

Certain threats not included. *Id.* p. 52. P.C. 787.

ART. 813. If any person shall knowingly send or deliver to another, any letter or writing, whether signed or not, threatening to accuse such other person of a criminal offense with a view of extorting money, property, thing of value, or any advantage whatever from such other person, or threatening to kill or in any manner injure the person of such other, or to burn or otherwise destroy or injure any of his property, real or personal, or to do any other injury to such other person, he shall be punished by fine not less than one hundred nor more than one thousand dollars, and, in addition thereto, may be imprisoned in the county jail not exceeding one year.

Sending threatening letter.

CHAPTER THREE.

SEDUCTION.

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ARTICLE 814. If any person, by promise to marry, shall seduce an unmarried female, under the age of twenty-five years, and shall have carnal knowledge of such female, he shall be punished by imprisonment in the penitentiary not less than two nor more than five years, or by fine not exceeding five thousand dollars.

Punishment. (Act Feb. 12, 1858, p. 185.) P.C. 788.

ART. 815. The term "seduction" is used in the sense in which it is commonly understood.

"Seduction," how used. P.C. 789.

ART. 816. If the parties marry each other at any time before the conviction of the defendant, or if the defendant in good faith offer to marry the female so seduced, no prosecution shall take place, or, if begun, it shall be dismissed; but the benefits of this article shall not apply to the case of a defendant who was in fact married at the time of committing the offense.

Marriage obliterates offense. P.C. 790.

ART. 817. No person who was, at the time of committing the offense, married, and the fact of marriage known to the woman, shall be held liable for the offense defined in this chapter.

Married man not liable, if known. P.C. 791.

TITLE XIX.

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Second and subsequent convictions for misdemeanor.  
P.C. 792.

ARTICLE 818. If it be shown on the trial of a misdemeanor that the defendant has been once before convicted of the same offense, he shall, on a second conviction, receive double the punishment prescribed for such offense in ordinary cases, and upon a third, or any subsequent conviction for the same offense, the punishment shall be increased, so as not to exceed four times the penalty in ordinary cases.

Subsequent conviction for felony.  
P.C. 792.

ART. 819. If it be shown, on the trial of a felony less than capital, that the defendant has been before convicted of the same offense, or of one of the same nature, the punishment, on such second or other subsequent conviction shall be the highest which is affixed to the commission of such offense in ordinary cases.

Third conviction for felony, how punished.  
P.C. 793.

ART. 820. Any person who shall have been three times convicted of a felony, less than capital, shall, on such third conviction, be imprisoned to hard labor for life in the penitentiary.

Second conviction for capital offense, how punished.  
P.C. 794.

ART. 821. A person convicted a second time of any offense to which the penalty of death is affixed as an alternate punishment, shall not receive, on such second conviction, a less punishment than imprisonment for life in the penitentiary.

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